GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

FRATERNAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE, a labor organization	
Complainants,	
	PERB Case No. 02-U-05
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS	
Respondent.	

RESPONDENT'S ANSWER TO UNFAIR LABOR PRACTICE COMPLAINT

The Respondent, the District of Columbia Department of Corrections ("Respondent" or "DOC"), by and through its representative, the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), hereby answer the allegations in the above-referenced Complaint, as follows:

1(a). The Respondent admits that the Fraternal Order of Police/Department of Corrections Labor Committee is a labor organization.

1(b). The Respondent admits that the following named persons are agents of the Respondent and currently occupy the positions as stated below:

Name	Position
Odie Washington	Director
James A. Anthony	Deputy Director

1(c) The Respondent denies that any other unnamed persons are agents and representatives of the Respondent and asserts that said allegation must be stricken as not including specific facts to put the Respondent on notice of any allegations against other unnamed individuals.

1(d) The Respondent denies that it has interfered with, restrained or coerced bargaining unit employees in the exercise of rights guaranteed under D.C. Code § 1-617.06 (2001 edition); 1-618.06 (2000 edition).

1(e). The Respondent denies that it discriminated in regard to the terms and conditions of employment of bargaining unit employees in order to discourage membership in the Complainant.

1(f). The Respondent denies that it engaged in bad faith bargaining.

1(g). The Respondent denies that it failed and refused to bargain in good faith by unilaterally raising the inmate population at the Central Detention Facility ("D.C. Jail"). The Respondent further states that at no time did the inmate population exceed the actual capacity of the D.C. Jail.

1(h). The Respondent denies that it failed and refused to bargain in good faith by adversely affecting bargaining unit employees in their terms and conditions of employment on or about November 10, 2001, and continuing thereafter.

1(i). The Respondent denies that it unilaterally implemented changes in the terms and conditions of bargaining unit employees.

1(j). The Respondent denies that it unilaterally implemented a plan to increase the inmate population at the D.C. Jail, but rather pursuant to D.C. Code §1-617.08(a)(6), responded to an emergency situation. Two hundred and eighty-one inmates were temporarily transferred to the D.C. Jail in order to effectuate the closure of the Lorton Complex by the Congressionally mandated deadline of December 31, 2001.

The Respondent never from November 10, through the present, exceeded the actual capacity of the Jail. Further, to date, of the 281 inmates temporarily transferred to the

D.C. Jail, 200 have been remanded into the custody of the Federal Bureau of Prisons or the U.S. Marshals Service.

1(k). The Respondent denies that it placed bargaining unit correctional officers and other bargaining unit employees at risk of any serious or substantial health and safety risk. The Respondent states that no bargaining unit or non-bargaining unit employees have been put at risk, other than those risks which are inherent or naturally associated with the nature of the job performed by individuals employed in the field of Corrections. That being said, these allegations are not unfair labor practices; and therefore are not under the jurisdiction of the PERB. Pursuant to Chapter 11 of the D.C. Code, §32-1105, the District of Columbia has established an Occupational Safety and Health Board, which among other things promulgates occupational safety and health standards in accordance with §32-1102. Under the same Chapter, at §32-1106, an Occupational Safety Board has been established, as well as an Office of Occupational Safety and Health under §32-1123. This Chapter addresses occupational safety and health standards, inspections and investigations, citations, judicial review and enforcement, as well as civil and criminal penalties. Therefore, any adjudication and/or remedies sought by the Complainant in these areas should be addressed thereto.

1(l). The Respondent denies that prior to the filing of the instant unfair labor practice Complaint that the Complainant requested to bargain over the impact and effects of any alleged changes in the terms and conditions of unit employees.

1(m). The Respondent denies that it received a request to bargain over the impact and effects of issues deemed Management's rights under D.C. Code § 1-617.08, and the impact of the exercise of such rights upon unit employees.

1(n). The Respondent denies that it has a duty to bargain over any other staff who are not included in the appropriate bargaining unit ("the Unit") represented by the Complainant, as set forth below in paragraph 3(a).

1(o). The Respondent denies the allegation that it refused to meet and/or bargain over the impact and effects upon the correctional officers and unrelated other staff. The Respondent further states that on November 21, 2001, the Complainant, during an unrelated RIF impact bargaining session, requested, as part of its RIF proposal package (Respondent's Attachment A) that all impending RIFs be suspended until the inmate population at the DC Jail is reduced to the Court ordered cap of 1,674.

During the course of the impact session in question, the union, for the first time, made a verbal reference to safety and health conditions at the jail and the impact of the Lorton transfers. Frankly, the Complainant was far more concerned with stalling impending Reductions-in-Force than addressing health and safety issues. Frankly, the health and safety issues addressed herein are merely an aside to the Complainant's ultimate goal, to delay RIFs. And, as a matter of fact, the alleged violation exceeds the statute of limitations for bringing a Complaint, pursuant to PERB Rule 520.4.

The Respondent has been and will continue to be open to engage in impact and effects bargaining at any time such request is made by the Complaint on any subject matter not impeding upon the Respondent's exercise of management's rights under D.C. Code § 1-617.08.

1(p). The Respondent denies all allegations as to its failure to correct or respond to health and safety complaints, and requests that such allegations be stricken as they are not unfair labor practices; and therefore do not fall under the jurisdiction of the PERB for adjudicatory or remedy purposes.

2. Paragraph 2 is a prayer for relief and, as such, does not require an answer. To the extent an answer is required, the Respondent denies all allegations in the instant Complaint and submits that the Complainant has failed to state a claim upon which relief may be sought.

3(a). The Respondent admits that the Union has been certified as the exclusive collective bargaining representative for the positions in existence at the time the Public Employee Relations Board (PERB), in Case No. 93-R-04, Certification No. 73 (January 12, 1994), certified the following appropriate bargaining unit (Unit):

> All employees of the D.C. Department of Corrections excluding managerial employees, confidential employees, supervisors, temporary employees, physicians, dentist and podiatrist, institutional residents (inmates) employed by the Department, or any employees employed in personnel work in other than a purely clerical capacity and employees engaged in administering provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978.

3(b). The Respondent admits that the Complainant's address and telephone number are as indicated.

4(a). The Respondent denies that William H. Dupree is a bargaining unit member or even an employee of any nature at the DOC. The Respondent further states that Dupree was separated as a result of the RIF of August 3, 2001, which was implemented by way of the Mayor's Administrative Order issued on May 14, 2001. The Respondent does admit that William Dupree serves as the Chairman of the FOP/DOC Labor Committee.

4(b). The Respondent admits that Irving Robinson is a bargaining unit employee of DC DOC, who also serves in the capacity of Treasurer for FOP/DOC Labor Committee.

4(c). The Respondent does not have sufficient information to respond to the internal union affairs of the FOP/DOCLC, and therefore, denies the allegations in paragraph 4 of the Complaint which state that Messrs. Dupree and Robinson and other officers have been elected

for a term of office from June 1, 2001 to May 31, 2002 by a secret ballot vote of the membership of the labor organization.

4(d). The Respondent admits that the Complainant's address and telephone number are as indicated and as stated in paragraph 3(b) above and in paragraph 4.

4(e). The Respondent denies all further allegations contained in Paragraph 4.

5(a). The Respondent admits that it is a subordinate agency within the executive branch of the Government of the District of Columbia under the administrative control of the Mayor.

5(b). The Respondent admits that it manages/operates correctional facilities located in the District of Columbia and the County of Fairfax, Virginia.

5(c). The Respondent admits that Odie Washington and James A. Anthony serve as Director and Deputy Director, respectively, as stated above in paragraph 1(b). The Respondent denies that any other unnamed persons are agents and representatives of the Respondent and asserts that said allegation must be stricken as not including specific facts to put the Respondent on notice of any allegations against other unnamed individuals.

5(d). The Respondent admits that the main administrative office for the DOC is located at 1923 Vermont Avenue, NW, Washington, DC 20001, and that the telephone number is (202) 673-2300.

6(a)(1). The Respondent denies that the Complainant and Respondent are parties to a collective bargaining agreement governing the working conditions of Unit employees.

6(a)(2). The Respondent further states that the parties are engaging in negotiations for an initial working conditions contract, however, the parties have not successfully concluded those negotiations at this time.

6(a)(3). The Respondent further states the terms and conditions of employment have been established through past practice as reflected in the former collective bargaining agreement between the Respondent and the Teamsters, which expired in 1990. (Respondent's Attachment B).

6(b). The Respondent denies that there are approximately 1,400 bargaining unit employees. The Respondent asserts that there are considerably fewer Unit employees due to ongoing reductions-in-force at the DOC over the past several years as a result of §11201 of the National Capital Revitalization Self-Government and Improvement Act of 1997 (PL-105-33; D.C. Code 24-1201).

6(c). The Respondent restates its answer to paragraph 3(a) above and admits that the Complainant is the certified collective bargaining representative for employees in the Unit set forth in paragraph 3(a) above.

6(d) The Respondent denies all other allegations in paragraph 6, and further states that the Attachment to the Complaint labeled as Exhibit A is a fabricated document apparently cobbled together from a contract with a prior labor representative.

6(e). The Respondent denies any knowledge of the document attached as Complainant's Exhibit B and states that there are serious questions as to the origin and authenticity of the attached "Memorandum of Understanding".

7(a). The Respondent denies paragraph 7 of the Complaint based on its lack of knowledge of internal union affairs.

7(b). The Respondent further denies that the Complainant is the exclusive representative of Unit employees for all matters within the scope of D.C. § 1-618.11 and other relevant provisions of the Comprehensive Merit Personnel Act ("CMPA").

8(a). The Respondent admits that the Complainant filed complaints with the D.C. Office of Occupational Safety and Health.

8(b). The Respondent admits that it received copies of some complaints that were filed with and fall under the jurisdiction of the D.C. Office of Occupational Safety and Health.

8(c). The Respondent admits that on September 25, 2000, the U.S. Public Health Service, Centers for Disease Control, issued an investigative report of the findings of the National Institute of Occupational Safety and Health (NIOSH).

8(d). The Respondent admits that the report found that indoor environmental quality (IEQ) problems were found relating to inadequate ventilation in the bubbles of all cellblocks evaluated.

8(e). The Respondent denies all other allegations in paragraph 8 of the Complaint.

9. The Respondent admits that the Complainant submitted, as an attachment to the Complaint, a document designated Exhibit D. The Respondent denies all other allegations of paragraph 9.

10(a). The Respondent denies all allegations in paragraph 10 of the Complaint, except that the Complainant's Exhibit E was forwarded to J. Patrick Hickey, Esq. by the Director of the Department of Corrections, Odie Washington.

10(b). The Respondent states that the inmate population was increased on November 10, 2001, with prior notice forwarded to the Complainant. Further the Respondent states that the Complainant did not request to bargain over the impact and effects of the exercise of its managements rights.

11. The Respondent denies all allegations contained in paragraph 11 of the Complaint.

12(a). The Respondent denies that it immediately increased the inmate population at the D.C. Jail. The Respondent provided the Complainant notice and an opportunity to bargain upon request.

12(b). The Respondent denies that the transfer of inmates and the reassignment of staff necessary to adequately run the facility, imposed any irreparable undue hardship upon employees. Further, should any hardship have arisen, such instances were addressed in the Complainant's "Exhibit H".

12(c). The Respondent denies all other allegations contained in paragraph 12 of the Complaint.

13. The Respondent denies all allegations in paragraph 13 of the Complaint. Further, the Respondent states that the Complainant has never requested to engage in impact and effects bargaining over health and safety issues as they relate to the D.C. Jail until, Wednesday, November 21, 2001, when a verbal reference was made to such issues, after the instant Complaint was already filed.

13(b). The Complaint in the Public Employee Relations Board ("PERB") Case 01-U-21, was withdrawn by the Complainant. Further, even if, for the sake of arguendo, Case No. 01-U-21 had not been withdrawn, prior to its withdrawal, it was consolidated with 01-U-28 and 32, and deals with matters that do not impact the instant Complaint. The Respondent even further states that PERB Case No. 01-N-01 addresses an issue of negotiability, which also does not offer proof of failure to bargain as to health and safety issues at the D.C. Jail, which, as noted previously herein, have never been raised prior to November 21, 2001.

14. The Respondent denies all allegations contained in Paragraph 14.

15. The Respondent denies all allegations contained in Paragraph 15.

16. The Respondent denies all allegations contained in Paragraph 16.

17. Paragraph 17 is a prayer for relief and, as such, does not require an answer. To the extent an answer is required, the Respondent denies all allegations in paragraph 17 of the Complaint.

18. The Respondent admits that the FOP/DOC Labor Committee and the Respondent are parties to unfair labor practice proceedings and other proceedings. However, the Hearing Examiner's Report and Recommendations was issued in Consolidated PERB Case Nos. 00-U-36 and 40, following the Hearing Examiner's dismissal of all allegations contained therein. Following the filing of exceptions by the Complainant, the matter is currently before the Board for final review.

AFFIRMATIVE DEFENSES

19. First Affirmative Defense

The Complainant challenges conduct that is expressly a right solely reserved to Management pursuant to the laws of the District of Columbia under D.C. Code § 1-617.08, which provides that management shall retain the sole right, in accordance with applicable laws and rules and regulations:

(1) To direct employees of the agencies;
(2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take disciplinary action against employees for cause;
(3) To relieve employees of their duties because of lack of work or other legitimate reasons;
(4) To maintain the efficiency of District government operations entrusted to them;
(5) To determine the mission of its agency, its budget, its organization, the number of employees, and the number, types, and grades of positions of employees assigned to an organizational unit, work project, or tour of duty and the technology of performing its work; or its internal security practices; and
(6) To take whatever actions may be necessary to carry out the mission of the government in emergency situations.

Further, the Respondent is required to effectuate the closure of the Lorton Complex in Fairfax County, Virginia, under §11201 of the National Capital Revitalization and Self Government Improvement Act of 1997 (PL-105; D.C. Code §24-1201). In order to comply with said directive, the Respondent faced an emergency situation and was forced to temporarily transfer Lorton inmates to the D.C. Jail until such time as their imminent removal and transfer to institutions across the country. The vast majority of these inmates have since been remanded into the custody of the Federal Bureau of Prisons or the U.S. Marshals Service, and are no longer housed at D.C. Jail.

Absent such action, the Respondent would not have met the Congressionally mandated deadline for the closure of the Lorton Complex, December 31, 2001. Nevertheless, the Respondent met its duty to bargain by providing the Complainant with notice and an opportunity to bargain. The Complainant, however, failed to demand to bargain over the impact and effects until after the instant unfair labor practice was filed.

Pursuant to D.C. Code §1-605.02, (Powers of the Board), the Board has been granted a number of express powers, but does not have jurisdiction over the Respondent's exercise of management rights under D.C. Code §1-617.08 or over the implementation of a Congressionally mandated downsizing. Therefore, no claim has been made upon which PERB can grant relief.

20. **Second Affirmative Defense**

The Complainant falsely alleges violations by misrepresenting the facts involving its assertion that prior to November 21, 2001, it requested to engage in impact and effects bargaining regarding health and safety issues at the D.C. Jail. The Respondent has repeatedly engaged in impact and effects bargaining over numerous issues associated with the closure of Lorton. Never, prior to November 21, 2001, has the Complainant, within the scope of impact

bargaining requested bargaining on the subject matter noted herein. Without a request to bargain, a Party cannot be held responsible for lack thereof.

21. Third Affirmative Defense

The Complainant, in this instance, as well as in a number of instances in the past, has failed to attempt to discuss and engage in bargaining over the substantive issues which they allege affect the terms and conditions of employment for bargaining unit employees in the instant matter, but would rather in bad faith, filed an unfair labor practice. The Respondent submits that the Complainant has acted in a pattern of bad faith at every opportunity. The Complainant's bad faith is further illustrated by the Union's tactic of failing to request to engage in bargaining, or seeking to reach mutually beneficial resolutions to outstanding issues. The Respondent further contends that the continuous dilatory tactics employed by the Complainant, which include frivolous unfair labor practice allegations, as well as, other allegations outside the jurisdiction of PERB, are a waste of resources and an abuse of process deserving of PERB sanctions.

22. **Fourth Affirmative Defense**

The Complainant raises a number of allegations, which in fact do not fall under the jurisdiction of the PERB. The D.C. Code Chapter 11, §§32-1101 through 32-1124, established the D.C. Occupational Safety and Health Board, Commission and Office, as well as the duties and responsibilities of such entities, which are the appropriate forums for the concerns raised herein by the Complainant. The PERB does not have the authority to adjudicate such matters, nor is there any remedy, which can be crafted by the PERB based upon those allegations that are not unfair labor practices.

23. **Fifth Affirmative Defense**

All matters, which occurred more than 120 days after the date on which the alleged violations occurred, are outside the statute of limitations and accordingly must be dismissed pursuant to the PERB Rule 520.4.

MOTION TO DISMISS AND MOTION IN LIMINE

The Respondent hereby moves:

1. For dismissal of all allegations relating to matters which are outside of the jurisdiction of the PERB; and,

2. For dismissal of all matters that are outside the statute of limitations.

Dated at Washington, D.C. this 5th day of December, 2001.

Respectfully submitted,
For Respondent:

District of Columbia Office of Labor
Relations and Collective Bargaining
441 4th Street, N.W.
Washington, D.C. 20001
Tel: (202) 724-4953
Fax: (301) 727-6887

Misty Johnson Oratokhai, Esq.
Labor Relations Specialist

Mary E. Leary, Attorney
Director

Attachment A

FOP/DOC RIF BARGAINING PROPOSAL
NOVEMBER 21, 2001

1. FOP PROPOSES THAT THE PARTIES AGREE TO ARBITRATE ALL RIF RELATED DISPUTES THAT ARE UNRESOULVED THROUGH RIF BARGAINING.

2. FOP PROPOSES THAT ALL IMPENDING RIF ARE SUSPENDED UNTIL THE INMATE POPULATION AT THE DC JAIL IS REDUCED TO THE COURT ORDERED CAP OF 1, 674.

3. FOP DETERMINED THAT 4 EMPLOYEES THAT WERE ADVERSELY IMPACTED BY BEING ERROUNIOUSLY SEPARATED BY THE RIF BY IMPROPER BI-LINGUAL CLASSIFICATION. SPECIFICALLY, ONE CASE MANAGER, ONE MAINTANCE WORKER AND TWO OFFICERS. FOP PROPOSED THAT THESE EMPLOYEES RIF ARE RESCINDED.

4. FOP DETERMINED THAT 21 EMPLOYEES THAT WERE ADVERSELY IMPACTED BY BEING ERROUNIOUSLY SEPARATED BY THE RIF BY NOT BEING CREDITED WITH THEIR APPROVED OUTSTANDING PERFORMANCE RATING. FOP PROPOSED THAT THESE EMPLOYEES RIF ARE RESCINDED OR IN THE APPLICABLE CASES, THE AFFCETED EMPLOYEES RECEIVE AN EXTENTION OF SEVERENCE PAY TO COMPENSATE FOR THE PERIOD OF TIME THEY WOULD HAVE WORKED.

Attachment B 24

GX-1

EXHIBIT

Agreement Between

Teamsters Local 1714, Affiliated With

The International Brotherhood of Teamsters

Chauffeurs, Warehousemen and Helpers

of America

and the

Government of the District of Columbia

Department of Corrections

TABLE OF CONTENTS

PREAMBLE

Section 1: This Agreement is entered into between the District of Columbia Government (Employer) and Teamsters Local Union No. 246, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union).

Section 2: The parties to this Agreement hereby recognize that the collective bargaining relationship reflected in this Agreement is of mutual benefit and the result of good faith collective bargaining between the parties. Further, both parties agree to establish and promote a sound and effective labor-management relationship in order to achieve mutual understanding of practices, procedures and matters affecting conditions of employment and to continue working toward this goal.

Section 3: The parties hereto affirm without reservations the provisions of this Agreement and agree to honor and support the commitments contained herein. The parties agree to resolve whatever differences may arise between them through the avenues for resolving disputes agreed to through negotiations of this Agreement.

Section 4: It is the intent and purpose of the parties hereto to promote and improve the efficiency and quality of services provided by the Department. Therefore, in consideration of mutual covenants and promises herewith contained, the Employer and the Union do hereby agree as follows:

ARTICLE 1

RECOGNITION

The Employer recognizes the Union as the exclusive representative of all employees of the D.C. Department of Corrections excluding managerial employees, confidential employees, supervisors, temporary employees or any employees engaged in personnel work in other than a purely clerical capacity and institution residents (inmates) employed by the Department.

ARTICLE 2

MANAGEMENT RIGHTS

Section 1: Management rights as prescribed in the Comprehensive Merit Personnel Act, Section 1708 (a) and (b) are as follows:

a. to direct employees of the agency;

b. to hire, promote, transfer, assign and retai employees in positions within the agency and to su pend, demote, discharge or take other disciplina action against employees for cause;

c. to relieve employees of duties because of lack work or other legimate reason;

d. to maintain the efficiency of the District Government operations entrusted to them;

e. to determine the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work, or its internal security practices; and,

f. to take whatever actions may be necessary to carry out the mission of the District Government in emergency situations.

All matters may be deemed negotiable except those that are proscribed in Title 17 of the Act. Negotiations concerning compensation are authorized to the extent provided in Section 1716 of the Act.

Section 2: The parties recognize that such management rights are beyond the scope of collective bargaining unless addressed in a separate Article of this Agreement.

ARTICLE 3

EMPLOYEE RIGHTS

Section 1: The Employer and the Union agree that employees have the right to join, affiliate with, or refrain from joining the Union. However, all employees will be financially responsible to the Union as provided for in Article 4. The right extends to participating in the management of the Union, or acting as a representative of the Union.

Section 2: The terms of this contract do not preclude any employee from bringing matters of personal concern to the attention of the appropriate officials in accordance with applicable laws, regulations and procedures.

Section 3: An employee may handle his own grievance and/or select his own representative; however, a Union representative may also be present if the Union so desires.

Section 4: It is understood that the employees in the bargaining unit shall have full protection of all articles in this contract as long as they remain in the unit.

Secton 5: Supervisors shall not impose any restraint, interference, coercion or discrimination against employees in the exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, the prosecution of grievances, and labor-management cooperation, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.

ARTICLE 4

UNION SECURITY AND UNION DUES DEDUCTIONS

Section 1: The terms and conditions of this Agreement shall apply to all employees in the bargaining unit without regard to Union membership. Employees covered by this Agreement have the right to join or refrain from joining the Union.

Section 2: The Employer agrees to deduct Union dues from each employee's bi-weekly pay upon authorization on D.C. Form 277. Union dues withholding authorization may only be cancelled upon written notification to the Union and the Employer thirty (30) days prior to each annual anniversary date (effective date) of this Agreement regardless of the provisions of the DC-277 Form. When Union dues are cancelled, the Employer shall withhold a service fee in accordance with Section 3 of this Article.

Section 3: Because the Union is responsible for representing the interest of all unit employeees without discrimination and without regard to Union membership (except as provided in Section 5 below), the Employer agrees to deduct a service fee from each non-union member's bi-weekly pay without a written authorization. The service fee and/or Union dues withheld shall be transmitted to the Union, minus a collection fee of seven cents (7¢) per deduction per pay period. Upon showing by the Union that fifty-one percent (51%) of the eligible employees for which it has certification are Union members, the Employer shall begin withholding, no later than the second pay period after this Agreement becomes effective and the showing of fifty-one percent (51%) is made, a service fee applicable to all employees in the bargaining unit who are not Union members. The service fee withholding shall continue for the duration of this Agreement. Payment of dues or service fees through wage deduction shall be implemented in accordance with procedures established by the Employer and this Article. Employees who enter the bargaining unit where a service fee is in effect shall have the service fee or Union dues withheld within two (2) pay periods of his/her date of entry on duty or execution of DC-277 form authorization, whichever applicable.

Section 4: The service fee applicable to non-union members shall be equal to the bi-weekly union membership dues that are attributable to representation.

Section 5: Where a service fee is not in effect, the Union may require that any employee who does not pay dues or a service fee shall pay all reasonable costs incurred by the Union in representing such employee(s) in grievance or adverse action proceedings in accordance with provisions of the Comprehensive Merit Personnel Act.

Section 6: The Employer shall be indemnified or otherwise held harmless for any good faith error or omissions in carrying out the provisions of this Article.

Section 7: Payment of dues or service fees shall not be a condition of employment.

ARTICLE 5

UNION-MANAGEMENT MEETINGS

Section 1: It is agreed that the Department and the Union shall meet every two (2) months or as otherwise agreed to by the parties to further labor-management cooperation as a standing Labor-Management Committee. The Department and the Union shall each select seven (7) members and alternates to serve on this Committee.

Section 2: It shall be the function of this Labor-Management Committee to discuss different points of view and exchange views on working conditions, terms of employment, matters of common interest or other matters which either party believes will contribute to improvement in the relations between them within the framework of this Agreement. It is understood that appeals, grievances or problems of individual employees shall not be a subject of discussion at these meetings, nor shall the meetings be for any other purpose which will modify, add to, or detract from the provisions of this Agreement. Other meetings of the Committee may be scheduled as the need arises upon the request of either party at times mutually agreed upon.

Section 3: The employer further agrees that three (3) representatives of the Union and the Department (including the Director or his designee from his office) will meet monthly at each institution as a standing Labor-Management Committee to discuss and review common interests for promoting labor-management cooperation at the institution level. Other meetings may be held at the institution level when the need arises and as mutually agreed upon by the parties.

Section 4: The Department and the Union agree to exchange agendas of topics to be discussed at least five (5) days in advance of the date set for the meetings. If unusual circumstances or timeliness of events do not allow for discussion of items on the agenda submitted in advance of the meeting, the issues thus presented may either be discussed by both parties or tabled for later discussion by either party.

Section 5: The members of the standing Labor-Management Committee appointed by the Union shall be granted official time to attend the above conference when the conferences occur during the regular working hours of the employees. The Union shall notify the Department at least one (1) day in advance of any scheduled meeting if an alternate will attend in the absence of the appointed member.

Section 6: A brief summary of the matters discussed and any understanding reached will be prepared by the Employer and furnished to the Union prior to the next meeting.

Section 7: The implementation of new policies or procedures which are subject to the provisions of this Agreement shall not be made until prior consultation with the Union.

ARTICLE 6

EQUAL EMPLOYMENT OPPORTUNITY

Section 1: The Department agrees to cooperate in providing equal employment opportunity for all persons, to prohibit discrimination because of age, sex, race, creed, color or national origin and any other statutory prohibitions.

Section 2: The Department agrees to provide the necessary procedures to process complaints of discrimination in accordance with the appropriate legal authority outside the realm of this Agreement. Such appeals/complaints shall be handled exclusively by such authority.

Section 3: The Department and the Union agree that provisions are authorized that provide disciplinary action against supervisors or employees who have been found guilty of discrimination.

Section 4: The Union will be given the opportunity, upon its request, to make recommendations to the Department prior to publication of Equal Employment Opportunity regulations, plans of action, and in the selection of Equal Employment Opportunity Counselors.

Section 5: The Union will assist the Department in supporting the Equal Employment Opportunity Program. The Union will notify the Department of any practices which they believe are discriminatory and will submit their recommendation to improve the program.

Section 6: Sexual harrassment is defined by law and regulations, and use of coercive sexual behavior to control, influence or affect the career, salary or job of an employee is prohibited.

ARTICLE 7

UNION REPESENTATION

Section 1: The Employer will recognize unit employee representatives (stewards) not to exceed 57, designated as such by the Union, and non-employee Union officials as the duly authorized representatives of the Union. Stewards shall be authorized to engage in permissible Labor-Management business (as defined by this Article) only within the work area and shift designated by the Union and as agreed to by Management.

Section 2:

a. The Union will furnish the Employer, in writing, with the names, shifts and work locations of elected stewards and submit changes as they occur.

b. When a steward who has been designated as such in writing is absent from work, the Union may designate an alternate to temporarily serve as steward during the absence of the regular steward. The Union will notify the appropriate supervisor of the designated alternate and the specified time period.

Section 3: Neither the Union nor any employee in the bargaining unit shall conduct Union business or carry on

Union activities (soliciting members, distributing literature, etc.) on Employer time. Distribution of literature or other contracts pertaining to Union business will be conducted during the non-work time of both stewards and members being contacted. There is to be no interference by unit members in a non-duty status with other employees' performance of official duties during working hours.

Section 4: When it is necessary for contacts to be made between employees and stewards to transact permissible Labor-Management business as defined in this Article, both the steward and the employee shall request approval from their immediate supervisor(s) to be relieved from duty for this purpose. The supervisor(s) shall be informed of the purpose of the request, the employee's destination if he/she is leaving the immediate work area, the amount of time needed and the employee he/she desires to contact. The steward, if eligible to be relieved from duty, shall first notify his/her supervisor that the employee he/she wishes to meet with has also received approval to be relieved from duty. If the request to be relieved from duty is disapproved by either supervisor, another date and time will be arranged that is agreeable amongst all parties. The Employer agrees that permission for a steward to participate in permissible Labor-Management business will not be unreasonably denied, however, the union and employees recognize that workload and scheduling considerations will not always allow for release of employees from their assignments as requested.

Section 5: Stewards will be permitted official time to engage in the following labor-management business:

a. Assist employees in the preparation and presention of grievances or appeals;

b. Arrange for witnesses and to obtain other information or assistance relative to a grievance or arbitration appeal; and,

c. Consult with department officials as provided in Article 5.

Section 6: The Union agrees that grievances should preferably be investigated, received, processed and presented during the first and last hour of the grievant's scheduled tour of duty, unless otherwise authorized.

Section 7: Only one (1) steward shall be recognized as the representative for each grievance.

Section 8: Official time may be granted upon written request to the appropriate Assistant Director or his/her designee for a designated steward to attend scheduled meetings with management officials outside the Department. Such meetings may include representation of employees in hearings or appeals conducted outside the scope of this Agreement. Permission to attend such meetings shall not be unreasonably denied. However, should time constraints make it impracticable to provide advance written notification, the steward shall obtain verbal permission from the appropriate Assistant Director or his/her designee to attend such scheduled meeting(s). If the Assistant Director or his/her designee is unavailable, the steward shall obtain permission from the appropriate Administrator or Office Chief.

Section 9: The shop steward shall be afforded the opportunity to address unit employees at roll call to explain labor-management business unless conditions in the institution dictate otherwise. Such time shall not exceed five (5) minutes and may be utilized up to three (3) times per week, each shift.

Section 10: Stewards assigned tours of duty other than day shift and scheduled days off shall have their assigned tour of duty and scheduled day off (if applicable) changed to coincide with the time of a grievance hearing. However, no overtime or other such form of compensation shall be allowed for attendance at any such hearing.

Section 11: This Article does not preclude employees from selecting someone other than a Union representative to represent him/her in a grievance, except that no rival organization may represent an employee in the negotiated Grievance Procedure, and provided also that if other than a Union representative (excluding management and supervisory officials) is used, a representative of the exclusive organization must be given an opportunity to be present at any meeting held to resolve the grievance.

ARTICLE 8

USE OF OFFICIAL FACILITIES AND SERVICES

Section 1: The Department agrees to permit distribution of notices and circulars sponsored by the Union to all employees in the unit through regular distribution procedures provided that the Union receives prior approval from the Department.

Section 2: The Department agrees to provide meeting facilities whenever available upon request to the Director or appropriate facility official. Any cost incurred for the cleaning or maintenance of such facilities after such meeting will be borne by the Union.

Section 3: Under no circumstances will Department manpower or supplies be utilized in support of or for internal Union business except as provided elsewhere in this Article.

Section 4: The Department agrees to make every effort to provide a private area for the employee and the steward when engaging in grievance handling pursuant to Article 7, Section 5a. of this Agreement.

Section 5. Two copies of Departmental Service and institutional directives, rules and regulations relative to terms and conditions of employment will be provided the Union.

Section 6: The Department agrees to designate bulletin boards for the exclusive use of the Union in each facility where available, and to provide space on designated board in appropriate work areas.

Section 7: All material posted on Union bulletin boards shall be readily identifiable as official Union literature by the use of official letterhead, logo or signature of the Union official.

ARTICLE 9

EMPLOYEE ROSTERS

Section 1: Upon written request to the appropriate Assistant Director, on an annual basis, the Union will be provided with a list of names, titles and grades of unit employees in each institution or office.

Section 2: On a monthly basis the Union will be provided, by each institution or office, a list of names, titles and grades of unit employees appointed, separated or transferred during the preceding month.

ARTICLE 10

GRIEVANCE PROCEDURE

Section 1: - Purpose and Definition:

The purpose of this grievance procedure is to establish an effective procedure for the fair, expeditious and orderly adjustment of grievances. Only an allegation that there has been a violation, misapplication or misinterpretation of the terms of this Agreement or of the applicable Compensation Agreement or disciplinary actions taken (corrective or adverse actions) shall constitute a grievance under the provisions of this grievance procedure. Any other employee appeals or complaints shall be handled exclusively by the appropriate administrative agency.

Section 2: - Categories:

a. Personal: An individual's grievance. In the cas of a grievant proceeding without Union representation, th Union must be given the opportunity to offer it's view at an meeting held to adjust the grievance.

b. Group: A grievance involving a number of employ ees in any subdivision of the Service components: Deter tion, Correctional, Community, Health, Administrative c Educational. A group grievance must contain all the info mation specified in Step 2 (Section 3) of the grievance proc dure. This kind of grievance may be filed at whatever ste resolution is possible.

c. Class: A grievance involving all the employees the unit. It must be filed and signed by the Union's Princip Executive Officer or designee at Step 4 of the grievar procedure. Grievances so filed will be processed only if issue raised is common to all unit employees. A class g vance must contain all information specified in Step 2 (S tion 3) of the grievance procedure. The Director, or designee, shall respond in writing within twenty-one days of receipt of the grievance.

Section 3: - Procedure:

a. Step 1: The aggrieved employee, with or wit a Union representative, shall orally present and discus grievance with the employee's supervisor within ten days of the occurrence of the event giving rise to the vance or within ten (10) days of the employee's knowle such event. The supervisor will make a decision or

grievance and reply to the employee and/or his/her representative within five (5) days after oral presentation of the grievance. In unusual circumstances, where the grievant cannot be physically present, a Union representative, authorized in writing by the grievant, may present the grievance at this Step without the grievant present.

b. Step 2: If the grievance is not settled, the employee, with or without his/her Union representative, shall submit a signed, written grievance to the appropriate Administrator or Office Chief within seven (7) days following the supervisor's oral response. This specific Step 2 grievance shall be the sole and exclusive basis for all subsequent steps. The grievance at this and at every further step shall contain:

(1) A statement of the specific provision(s) of the Agreement alleged to be violated;

(2) The date (s) on which the alleged violation occurred;

(3) A brief description of how the alleged violation occurred;

(4) The specific remedy or adjustment sought;

(5) Authorization by the employee if a Union representative is desired; and,

(6) The signature of the aggrieved employee and the Union representative, if applicable, according to the category of the grievance.

c. Should the grievance not contain the required information, the grievant shall be so notified and given five (5) days from receipt of notification to resubmit the grievance. Failure to resubmit the grievance within the five (5) day period shall void the grievance.

d. The Administrator or Office Chief shall respond to the employee in writing within seven (7) days of receipt.

e. Step 3: If the grievance remains unsettled, the employee shall submit the grievance to the appropriate Assistant Director within five (5) days following the employee's receipt of the response of an Administrator or Office Chief. The Assistant Director must respond in writing within seven (7) days of receipt.

f. Step 4: If the grievance remains unsettled, the employee shall submit it to the Director within five (5) days following the receipt of the response of an Assistant Director. Within twenty-one (21) days of receipt the Director will respond in writing to the grievant.

g. Step 5: If the grievance remains unresolved, the Union, within fifteen (15) days after receipt of the Director's response shall notify the Director and the D.C. Office of Labor Relations and Collective Bargaining (OLRCB) in writing whether the Union intends to request arbitration or request that the Department agree to utilize the Grievance Mediation procedure described below on behalf of the employee(s).

Section 4: - Grievance Mediation:

a. The purpose of this Grievance Mediation procedure is to provide on an experimental basis, an innovative method by which the parties may mutually reach satisfactory solutions to grievances prior to the invocation of arbitration. The parties recognize the necessity of carefully considering the circumstances of the particular grievance in deciding whether to utilize this procedure. This experimentation, while broadening the channels of grievance resolution, must comply with District of Columbia laws, rules and regulations and the negotiated grievance procedure and shall only be invoked upon mutual agreement of the parties in writing on a case-by-case basis.

b. - Selection:

(1) Should the parties fail to resolve the grievance utilizing the grievance procedure set forth above (Section 3), the parties may, within ten (10) days after the Union's request for Grievance Mediation pursuant to Step 5 of the grievance procedure, mutually agree to utilize the Mediation process as set forth below.

(2) A joint request shall be submitted to the Federal Mediation and Conciliation Service that Grievance Mediation services be provided. The mediator selected must have demonstated expertise in public sector labor relations and in Grievance Mediation/Arbitration.

c. - Mediation Procedures:

(1) Each party shall have representation at the mediation session.

(2) The grievant(s) shall be present at the mediation session. In the case of a class or group grievance, a maximum of three (3) grievants shall be present as representatives of the class or group.

(3) The parties shall submit, respectively, a written statement of their positions to the mediator. Oral arguments shall be presented, however, briefs shall not be submitted.

(4) Mediation sessions shall be informal; the rules of evidence shall not apply.

(5) No record of the session shall be made.

(6) During the session, the mediator may meet individually or jointly with participants, however, he/she is not authorized to compel or impose settlement.

(7) The mediation session shall not exceed one (1) day unless the parties agree otherwise.

d. - Mediation Conclusion:

(1) Within ten (10) days of the mediation proceeding's termination, the mediator shall render a signed settlement agreement if the parties so settled.

(2) The parties shall sign their respective copies of the settlement agreement and return them to the mediator within five (5) days of its receipt.

(3) Should both parties accept the advisory opinion and/or a settlement, it shall not have precedent setting value unless mutually agreed to on a case-by-case basis.

(4) Should an agreement not be reached by the conclusion of the session, the mediator shall immediately provide an oral advisory opinion which the parties may consider in negotiating an agreement themselves.

(5) Should mediation and any further negotiations among the parties fail to resolve the matter, the arbitration proceedings in accordance with Section 3 may be invoked by the Union within five (5) calendar days of the termination of the Mediation session.

(6) The mediator shall be barred from arbitrating the grievance in a subsequent arbitration proceeding or testifying in a subsequent arbitration proceeding.

(7) Documentation pertaining solely to the Mediation Process including evidence, settlement offers or the mediator's advisory opinion shall be inadmissible as evidence in any arbitration proceeding.

(8) The fees and expenses of the mediator shall be shared equally by the parties.

Section 5: - Arbitration:

a. The parties agree that arbitration is the method of resolving grievances which have not been satisfactorily resolved pursuant to the Grievance Procedure or Grievance Mediation.

b. If both parties agree, disputes of arbitrability shall be heard in a separate hearing prior to a hearing on the merits. When the demand for arbitration is received by the Department and the OLRCB, if management asserts nonarbitrability, the Union will be notified that management believes that the issue is not arbitrable. If both parties agree to this process, the OLRCB will then request from the Federal Mediation and Conciliation Service (FMCS) a separate panel of five (5) arbitrators who have dates available within three (3) weeks of the date of the request. The panel shall not include any of the arbitrators on the list for arbitration on the merits, per Section 5.d. The parties shall select a arbitrator from this panel to hear only the arbitrability issu The hearing on the arbitrability issue shall take place with three (3) weeks after the request for a panel and before hearing on the merits. The hearing on the arbitrability issu shall be concluded in one (1) day and the arbitrator sha render an oral decision at the conclusion of the hearing. T cost of this arbitration proceeding shall be shared equa between the parties.

c. If the parties proceed beyond Section 5 b. (arbitrat ity) above, and the parties fail to agree on a joint stipulati of the issue(s), each party shall submit a separate statem

of the issue(s), to be determined in arbitration pursuant to the voluntary labor arbitration rule of the Federal Mediation and Conciliation Service (FMCS).

d. Within ten (10) days after the Director and the D.C. Office of Labor Relations and Collective Bargaining have received the request for arbitration, the Union shall request the FMCS to refer a panel of seven (7) impartial arbitrators. Upon receipt of the FMCS panel the parties will select one (1) of the arbitrators. If the parties cannot agree to one (1) of the names on the list, each party will alternately strike a name from the panel until one (1) remains. If, before the selection begins, none of the arbitrators are acceptable, a new panel shall be sought.

Section 6:

a. The arbitrator shall hear and decide only one (1) grievance appeal in each case unless substantially similar issues are involved. In such circumstances cases shall be consolidated for arbitration upon agreement of the parties.

b. The hearing shall not be open to the public or persons not immediately involved unless all parties agree to such. All parties shall have the right, at their own expense, to legal and/or stenographic assistance at this hearing.

c. The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision on the issue(s) presented and shall confine his/her decision solely to the precise issue(s) submitted for arbitration.

d. The arbitrator shall render his decision in writing, setting forth his/her opinion and conclusions on the issues submitted within thirty (30) days aftter the conclusion of the hearing or, within thirty (30) days after the arbitrator receives the parties briefs, if any, whichever is later. The decision of the aribitrator shall be binding upon both parties and all employees during the life of this Agreement.

e. A statement of the arbitrator's fee and expenses shall accompany the award.. The fee and the expenses of the arbitrator shall be shared equally by the parties.

f. Appeals of the arbitration awards shall be made in accordance with District of Columbia law (D.C. Code Section 1-605.2(6) which grants the parties the right to appeal arbitration awards to the Public Employee Relations Board or D.C. Superior Court under the Uniform Arbitration Act, whichever applicable.

Section 7: - General

a. No matter shall be entertained as a grievance unless raised within ten (10) days of the occurrence of the event giving rise to the grievance, or within ten (10) days of the employee's knowledge of the occurrence of the event giving rise to the grievance.

b. Any unsettled grievance not advanceed to the next step by the employee or, in the event of a class or group

grievance, the Union representative, within the time limit specified in the step, shall be deemed abandoned. If the Department does not respond within the time limit specified at each step, the employee may invoke the next step treating the lack of response as a denial of the grievance.

c. All time limits must be strictly observed unless the parties mutually agree too extend said time limits. "Days" means calendar days.

d. No recording device shall be utilized during any step of this procedure unless by direction of the arbitrator for his/her use. No person shall be present at any step for the purpose of recording the discussion.

e. The presentation and discussion of grievances shall be conducted at a time and place which will afford a fair and reasonable opportunity for both parties and their witnesses to attend. Such witness(es) shall be present only for the time necessary for them to present evidence. When discussions and hearings required under this procedure are held during the work hours of the participants, they shall be excused with pay for that purpose. An employee scheduled to work shift-work or weekends will have his/her hours changed to coincide with the time of the hearing.

f. The settlement of a grievance prior to arbitration shall not constitute a precedent in the settlement of grievances.

g. In appropriate circumstances, management may utilize the grievance/arbitration procedure by first filing a grie-

vance with the Principal Executive Officer of the Union. Such filing and response shall be under the same time limits as a Step 4 grievance.

ARTICLE 11

DISCIPLINE (Corrective/Adverse Actions)

Section 1: Both parties recognize the exclusive rights o Management to discipline employees for just cause. How ever, in order to assure that discipline and discharge case are handled in an expeditious manner, decisions in such cases will be appealed exclusively under the provisions o Article 10 of this Agreement and as stipulated below.

Section 2:

a. Disciplinary actions may be grieved only at the nex higher level than where the level of the final action wa taked, except in the case of actions taken by the Director.

b. Should the employee or union (in the case of appea to arbitration) wish to grieve a disciplinary action, suc grievance/arbitration must be filed within the time lim specified in the grievance precedure starting with the da after the effective date of the action.

Section 3: Employees will be reprimanded by supervisors a manner that will not embarrass them before oth employees or the public.

Section 4: Employees requested to reply to disciplinary actions will be informed of the right to have a Union representative present.

Section 5: If an employee can reasonably expect discipline to result from an investigatory interview, and reasonable advance notification of the interview has not been given, at the request of the employee questioning shall be delayed for no longer than twenty-four (24) hours in order to give the employee an opportunity to consult with a Union representative. An employee's Union representative may be present at all investigatory questioning sessions held under this Article, but may not answer questions on behalf of the employee. However, the representative may counsel the employee and may assist the employee in presenting the facts.

Section 6: Discipline and discharge will remain in effect until, and unless, changed by an action resulting from a review.

Section 7: Discharge of probationary and temporary employees shall be governed by applicable District regulations.

ARTICLE 12

LEAVE

Section 1: Annual Leave:

a. The Department agrees to provide each employee in the unit an opportunity to use all of the annual leave earned in accordance with Department leave policies. Denial of use of leave will be based upon factors which are reasonable,

equitable and non-discriminatory. Approval of an employee's request to take annual leave will be granted provided the employee's service can be spared. All annual leave requests must be submitted in advance of the time requested, in accordance with schedules established by supervisors. Failure to obtain advance approval for leave may result in having the absence charged to absence without leave (AWOL). Emergency annual leave may be approved by the designated supervisor when an oral request is made. If granted, the employee must submit a written Application for Leave (SF-71) within twenty-four (24) hours of return to duty.

b. Only supervisors designated by the Department will authorize annual leave. In the absence of the designated supervisor, emergency annual leave will be approved by the next higher level of supervision.

c. All employees requesting a leave period of one (1) week or more will do so in accordance with the following:

1. Their request will be submitted by October 30 each year.

2. Supervisors will notify each employee of the disposition of his/her request by November 30.

3. If more employees from the same work section or are than can be spared apply for leave for the same period, th employee with the greatest service with the Department w have preference except as provided in 6. below. T employee(s) required to make a new selection will ha preference over employees who did not submit requests October if the new selection is resubmitted by Decem ber

4. Employees wishing to change their request may do so provided their service can be spared and their new choice does not conflict with leave scheduled for another employee. Since these dates are tentative, the employee will request from his/her supervisor the proposed leave period he/she desires to change as far in advance as possible.

5. During the period May 1 to October 1, no employee will be granted more than one (1) leave period until every employee in the work area has had an opportunity to take a leave period during these months.

6. The granting of leave for the days of Thanksgiving, Christmas and New Year holidays will be on a rotating basis so that all employees may have an equal opportunity for leave at these times.

7. Although every effort will be made by supervisors to honor advance requests for leave periods, an advance request is not a guarantee of final approval. The Employer reserves the right to cancel leave previously approved for circumstances such as workload and unforseen urgent needs. In the event it is necessary to cancel advance requests, the supervisor will promptly advise the employee concerned. In such cases the employee's circumstances will be given due consideration. Every effort will be made to reschedule the leave period for the employee's convenience.

8. If an employee is transferred within the Department at his/her request or as a result of a promotion, training assignment, or voluntary shift change other than the normal shift rotation, the employee may be required to adjust his/her leave to the leave schedule in the unit to which he/she has been transferred. If the move has been as a result of a management decision, seniority will be the controlling factor.

d. In the event of a death in the immediate family (parent, sister, brother, spouse, child, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law) of an employee, he/she shall be granted annual leave for a maximum of three (3) successive work days upon request.

Section 2: - Sick Leave:

a. Supervisors may approve sick leave of employees who are unable to perform their duties due to illness. Employees assigned to rotating shifts or regular tours of duty shall request sick leave from the control center one (1) hour before the start of their scheduled shift for each absence. All other employees shall request sick leave as soon as possible prior to the start of their regular shift on the first day of absence and for each subsequent day but not later than one (1) hour after the beginning of each shift.

b. A sick leave request is not an entitlement to sick leave. Upon a reasonable suspicion of abuse or for absences of three (3) days or more a supervisor may require the employe to submit a doctor's certificate or submit to a fitness for duty examination.

c. Sick leave will be requested in advance for visits to, and/or appointments with doctors, dentists, practitioners, opticians, chiropractors and for the purpose of securing diagnostic examination, treatment and x-rays.

Section 3: - Advanced Sick Leave:

Advance sick leave may be granted at the discretion of the supervisor in accordance with applicable District Personnel regulations.

Section 4: - Leave Without Pay:

Leave Without Pay (LWOP) may be granted at the discretion of the supervisor in accordance with applicable District Personnel regulations.

Section 5: - Maternity Leave:

a. Any employee (male or female) may be granted any combination of annual leave or leave without pay in accordance with this Article for a period of up to one (1) year because of pregnancy, childbirth or related medical conditions.

b. A female employee may use sick leave to cover the time required for physical examinations and to cover any period of incapacitation due to pregnancy.

c. No employee shall be required to take maternity leave unless and until her doctor states that she is disabled

from work. No employee shall be refused return from maternity leave at any time she reports for work upon advice of her doctor that she is physically capable to perform her job.

ARTICLE 13

TRAINING

Section 1: Consistent with the availability of funds, the Employer agrees to provide whatever training necessary to develop the skills, knowledge and abilities that will best qualify employees for the performance of official duties that can help significantly to increase efficiency and effectiveness of operations of the Department. This includes training for employees whose jobs have been substantially altered through no fault of the employees.

Section 2: The Employer agrees that official time (not t include travel time or per diem) may be granted to a Unio representative to attend labor-management training which of mutual concern to the Employer and the Union.

Section 3: Normally, training which is authorized an approved by the Employer will be conducted during regul working hours (8:00 a.m. - 4:30 p.m.) whenever practicabl This does not apply to reading assignments given as part training nor does this Article or any aspect of this Agreeme preclude an employee from participating in training his/her time if so desired.

Section 4: A record of an employee's training and details to other than regular assignments will be documented and placed in the individual's Official Personnel Folder to be used as reference for qualification for job openings.

Section 5: The Department shall provide appropriate correctional training to all personnel commensurate with their inmate contact upon (prior to) their entrance on duty. Periodic in-service training shall be provided so that all correctional officers who have completed their probationary period are enrolled for forty (40) hours per week. Employees who are not correctional officers who work in an institutional setting and who have completed their probationary period shall be enrolled in in-service training for eight (8) hours per year. The scheduled in-service training may be temporarily suspended or modified only by the Director or Deputy Director, due to unforeseen circumstances.

Section 6: Opportunities for employee development through outside educational programs which are related to performance of official duties will be made available in accordance with Title 13 of the Comprehensive Merit Personnel Act.

Section 7: The department will attempt to provide an orientation for employees who are expected to drive ambulances. This orientation will include an explanation of the mechanical operation of the ambulance and anything else the Department deems necessary.

ARTICLE 14

HEALTH

Section 1:

a. An employee who becomes ill or injured in the performance of his/her job shall be instructed as to the benefits under Title XXIII of the Comprehensive Merit Personnel Act.

b. The supervisor will expedite the process of necessary paperwork dealing with compensable injuries at his/her level.

c. An employee who is injured on the job and as a result will be disabled from work shall provide his or her supervisor, within seven (7) days of the injury, with written certification by a licensed physican verifying the medical diagnosis and the specific physical limitations resulting from the injury. The employee shall provide, at the written request of the supervisor, weekly certification by a licensed physician verifying the medical diagnosis and explaining why the employee continues to be disabled from work. The supervisor shall not require the employee to provide weekly certification if the initial certification or a subsequent certification in addition to the information described above, states that the employee will be disabled from performing his/her duties for a specific period of time in excess of one (1) week

An employee shall not be required to provide any subsequent medical certification if the original certification, in addition to the medical diagnosis and specification of physical limitations, states that the physical limitations will continue for a minimum of 45 days. Although it is expected that the employee will normally be able to provide medical certification, if the treating physician refuses to provide the employee with the required documentation, the employee shall give a written authorization to the physician, and a copy of the release to the supervisor, authorizing the physician to provide all medical data requested by the supervisor or other management official regarding the employee's injury.

Section 2: The medical records of an employee will be maintained confidentially under the control of a medical staff employee. When requested by the employee, his/her full medical record will be made available to a licensed physician designated by the employee.

Section 3: The Employer agrees to provide:

a. Emergency diagnosis and first-aid treatment of injury or illness during working hours and that are within the competence of the professional staff and facilities of the health services unit.

b. Such in-service examinations as the Department determines necessary.

c. Administration, at the discretion of the health service unit physician, of treatment and medications furnished by the employee and prescribed in writing by his personal physician.

d. Preventive services within the competence of the professional staff, e.g., appraise work environment, health hazards, health education program and specific disease screening examinations.

e. Assistance for an employee recuperating from an illness or injury and temporarily unable to perform their assigned duties. The employee must submit a doctor's certificate to the supervisor with his/her request for a temporary assignment to limited duty. The Employer may require that such request be reviewed by the Chief Medical Officer who will make a report to the Employer with appropriate recommendations. Employees who suffer verified temporary on-the-job illness or injury shall be temporarily assigned to available limited duty during their period of incapacitation. The Employer may require an employee on limited duty assignment to submit to a fitness-for-duty examination to determine his/her status for full duty. If needed, consideration should be given to restructuring an existing job incorporating only those duties in the new job that the employee can handle physically.

Section 4: The Department agrees that:

a. The Health Services and the Human Resources Development Center shall include in its health program, educational information and training on the issue of AIDS

in the workplace.

b. Employees required to perform body searches shall be provided surgical gloves.

Section 5: The Employer agrees to provide relief to correctional staff within a reasonable period of time for employees in areas where toilet facilities are not easily accessible.

ARTICLE 15

SAFETY

Section 1: The Department will continue to make every reasonable effort to provide and maintain safe working conditions. The Union will cooperate in these efforts and encourage employees to work in a safe manner and promptly report to the supervisor all accidents.

Section 2: In the course of performing their normally assigned work, employees will be alert to observe unsafe practices, equipment and conditions as well as environmental conditions which represent industrial health hazards and shall immediately report any of the above to their supervisor.

Section 3: If competent technical authority such as the Department's Medical Officer, the Security Officer, the Environmental Health Inspector, the Chief Engineer, the Safety Officer or the Industrial Hygenist has determined working conditions within a particular unit are unduly hazardous to the employee's health or safety, then an employee will not be required to work within that specific area until the conditions have been removed or remedied.

Section 4: The Department agrees that an employee will not be required to operate equipment that he/she is not qualified to operate.

Section 5: The Department agrees to furnish appropriate protective clothing and equipment necessary for the performance of assigned work. The Union may, at its discretion, recommend new protective clothing and equipment and modifications to existing equipment for consideration by the Department.

Section 6: Ambulance service to injured employees will be available on all shifts.

Section 7: The Union and the Department will make every effort to prevent accidents of any kind. Should accidents occur, however, a prime consideration will be the welfare of injured employees.

Section 8: An extra copy of Form CA-1 will be prepared. The Safety Officer will forward one (1) copy of the CA-1 to the Union representative on the Safety Committee.

Section 9: The Department agrees that the Union shall have two (2) members, one correctional and one non-correctional, on the Department Safety Committee. These meetings will be held during working hours without loss of

pay or leave to employees.

Section 10: No employee will be required to operate any vehicle which has clearly recognized brake, steering, front-end, tire wear, flooring or exhaust system deficiencies as determined by a mandatory monthly preventive maintenance check which shall include the above mentioned items.

Section 11: The Union may make recommendations to the facility Administrator and the Director regarding the detection methods used to prevent the introduction of contraband into the facilities.

Section 12: The Department shall select a single type of bunk tag to be used within each institution or facility and shall ensure that an adequate supply of the designated type is available, except in unusual or unforeseen circumstances.

Section 13: The Employer will make reasonable efforts to ensure that inmates do not have access to employees' personnel files or to any documents pertaining to employee discipline or counseling.

ARTICLE 16

REDUCTION-IN-FORCE

Section 1: The Employer agrees to notify the Union of all proposed reduction-in-force actions which may affect unit employees. The Employer will consult the Union concerning any proposals to minimize the number of affected employees.

Section 2: In the event of a RIF, procedures in the District's personnel regulations, in accordance with appropriate provisions of the Comprehensive Merit Personnel Act, shall be utilized

ARTICLE 17

UNIFORMS

Section 1: The Employer shall provide the following items of uniforms to unit employees as specified:

a. Correctional Officer, Male:

Blouse, blue	2 each
Overcoat, blue	1 each
Trousers, blue (winter)	3 pairs
Trousers, blue (summer)	3 pairs
Frame, cap, winter (opt.)	1 each
Frame, cap, summer (opt.)	1 each
Shirt, gray, short sleeve	6 each
Shirt, gray, long sleeve	6 each
Necktie, black	1 each
Whistle, chrome	1 each
Raincoat	1 each
Badge, large, silver	1 each
Badge, small, silver	1 each

b. Correctional Officer, female:

Badge, large, silver	1 each
Badge, small, silver	1 each
Frame, cap, winter (opt.)	1 each
Frame, cap, summer (opt.)	1 each
Blouse, blue	2 each
Overcoat, blue	1 each
Trousers, blue (summer)	3 pairs
Trousers, blue (winter)	3 pairs
Shirt, gray, long sleeve	6 each
Shirt, gray, short sleeve	6 each
Necktie, black	1 each
Whistle, chrome	1 each
Raincoat	1 each

If a Correctional Officer is pregnant and on active duty, the Employer shall make available suitable uniform clothing upon the employee's request.

c. Khaki Uniforms: (Wage employees and other employees assigned to jobs requiring these uniforms)

Trousers, Khaki	6 pairs
Shirt, Khaki, long sleeve	6 each
Shirt, Khaki, short sleeve	3 each
Raincoat	1 each
Coveralls, Khaki	2 pairs
Shoes, Safety, steel toe	1 pair

d. Food Service Stewards:

Trousers, blue (summer)	2 pairs
Trousers, blue (winter)	2 pairs
Blouse, blue	2 each
Overcoat, blue	1 each
Shirt, white, long sleeve	6 each
Shirt, white, short sleeve	6 each
Necktie, black	1 each
Whistle, brass	1 each
Raincoat	1 each
Frame, cap, winter	1 each
Frame, cap, summer	1 each
Badge, large, gold	1 each
Badge, small, gold	1 each

Section 2: Cleaning and maintenance are the responsibility of each employee. However, the laundry facility at Lorton (Central Facility) shall be made available for issued washable items.

Section 3: Issued uniforms will be worn by employees only in the course of their job duties and traveling to and from work. Unserviceable clothing will be replaced by the Employer as soon as available provided that the damage was not due to neglect by the employee and when such items are damaged through fair wear and tear and in the performance of their duties.

Section 4: Types and styles of uniforms are subject to Management discretion.

Section 5: The uniform warehouse shall be open Monday through Friday from 7:00 a.m. to 3:30 p.m. except for breaktime. The Union agrees that Management shall change hours of work of the employee who operates such warehouse to accommodate this schedule.

Section 6: Key Keepers shall be issued to all employees issued keys.

Section 7: Flashlights shall be made available at appropriate locations as determined by Management.

ARTICLE 18

DETAILS, TEMPORARY PROMOTIONS AND PAY IN A HIGHER-GRADED POSITION

Section 1: Details or temporary promotions shall be made in accordance with appropriate provisions of the District Personnel Regulations.

Section 2: - Acting Pay:

An employee detailed or assigned to a higher-graded position for more than ninety (90) consecutive days shall receive the higher rate of pay beginning the first full pay period following the ninety (90) day period. If Management decides to reassign an employee to a higher-graded position after the employee returns from approved leave or disability compensation, such absences will not be considered a break in the consecutive day requirement.

Section 3: Management shall take measures to insure that an employee assigned or detailed to a higher-graded position is not arbitrarily removed from the detail and then reinstated to the detail in order to avoid Acting Pay in accordance with Section 2 above.

Section 4: Details or assignments to a higher-graded position shall not be used as a pre-selection device. For purposes of the preceeding, the term "pre-selection device" refers to a recurring pattern of selection of individuals for promotions that are not the most highly qualified and were assigned/detailed to the higher-graded position as provided under this Article.

ARTICLE 19

DISTRIBUTION OF OVERTIME AND TOUR OF DUTY

Section 1: Where specific personnel demands are not necessary and where the operational mission allows, overtime assignments will be offered to qualified, voluntary personnel and distributed equitably. A list shall be posted for employees to sign up for voluntary overtime.

Section 2: Changes in shift will be distributed and rotated equitably among qualified employees. The Union may consult with the Employer concerning the assignments and changes of shifts. A record of employee changes of shifts and assigned days off shall be maintained by the Employer and can be reviewed by the Union.

ARTICLE 20

MERIT STAFFING/PROMOTION

Section 1: Merit staffing and promotion procedures shall be implemented in accordance with applicable provisions of the DPM as implemented by the established DCOP Merit Staffing Plan and this Article.

Section 2: The Employer will administer the following practices and principles:

a. The Employer will announce all job vacancies for at least ten (10) calendar days. A copy of the vacancy announcement will be provided to the Union's Principal Executive Officer.

b. Based on established qualifications, applicants will be evaluated and a list of "Highly Qualified" candidates (if so evaluated) will be referred to the selecting official and, in the absence of a "Highly Qualified" list, the "Well Qualified" list (if so evaluated) will be referred to the selecting official and, in the absence of the "Well Qualified" list the "Qualified" list (if so evaluated) will be referred to the selecting official.

c. The Employer will notify all applicants of the outcome of their application for the position.

d. Copies of the Department Order describing the procedural aspects of the Merit Staffing/Promotion Program will be made available at each facility to all employees and a copy provided to the Union's Principal Executive Officer.

Section 3: - Area of Consideration:

To the extent not in violation of Equal Opportunity laws and regulations and the Department's Affirmative Action Plan, the area of consideration to fill position vacancies in the bargaining unit shall be the Department; provided that the official requesting the personnel action certifies to the Office of Personnel that an adequate number of qualified candidates is expected to result from such limited area of consideration. An adequate number shall be no less than three (3).

Section 4: Outside candidates competing for departmental promotional opportunities must be equally or better qualified than internal applicants before they will be appointed/promoted.

Section 5: The Union will have ex-officio membership as an observer on merit staffing panels for non-supervisory positions within the bargaining unit except for positions in the Director's Office. The Union representative must be the same grade or higher than the position being filled. The Union representative cannot be an employee of the institution for which he/she is serving as a panel member or an applicant for the vacant position. In any instance where possible conflict may exist regarding the Union representative, the Office of Personnel will contact the Union's Principal Executive Officer to review the conflict prior to the panel meeting. Such observer must sign a pledge of confidentiality

regarding items restricted by the Privacy Act.

Section 6: For non-correctional vacancies, if one eligible candidate who is certified for consideration is interviewed, all such candidates will be interviewed.

Section 7: If the final selecting official passes over the eligibles sent to him/her, the selector must justify his/her reasons to the Office of Personnel in writing before extension of the recruitment is initiated.

Section 8: No employee can file a grievance for non-selection unless there has been a violation of the stated procedures in the merit promotion plan. Complaints of non-selection due to discrimination are not subject to the negotiated grievance procedure and are exclusively appealable to the appropriate administrative agency handling such complaints.

Section 9: The parties agree that in lieu of utilizing social security numbers, etc. in "breaking ties for certification" as provided in the Merit Staffing Plan (DPM Chapter 8 Appendix A (A.12) that the following shall apply: Seniority in grade will be the first deciding factor, and if still tied, years in the Department will then be the deciding factor.

ARTICLE 21

POSITION DESCRIPTIONS

Section 1: Each employee will be supplied with a copy of

his/her official position description by the Office of Personnel upon entry to duty or change in position description. Position descriptions will be furnished to the Union when those position descriptions involve Union interest such as in a current and direct dispute or controversy with department management. Other requests for position descriptions will be made directly to the Director of the Office of Personnel.

Section 2: The clause found in job descriptions "performs other duties as assigned" shall be construed to mean the employee may be assigned to other duties which are normally related to regular assignments. However, it is recognized that management decisions reflect the needs of the organization and are not designed to improperly utilize the skills of the employee to take unfair advantage of the employee's employment status. The Employer recognizes that job assignments should be commensurate with position descriptions. The Union recognizes that at times the Employer must deviate from this policy. When such deviation is necessary, the Employer will make every effort to assign employees whose normal duties and pay levels are most nearly associated with the job to be assigned. In all cases, such assignments will be kept to a minimum and an attempt will be made to meet these needs on a voluntary basis. The Employer further agrees to take into consideration, when making such assignments, the employee's ability to perform, health and age.

Section 3: Position classification appeals are not subject to the negotiated grievance procedure. Such classification appeals shall be processed to the Office of Employee

Appeals in accordance with applicable law. Copies of procedures to be followed in filing appeals will be made available to employees and Union repesentatives upon request to the Office of Personnel.

ARTICLE 22

PERSONNEL FILES

Section 1: An employee shall have the right to view his/her Official Personnel File and, upon request, inspect or copy any document appearing in his/her Official Personnel File, consistent with release of official information as prescribed in the Comprehensive Merit Personnel Act and District regulations.

Section 2: The Employer will assist the employee or his/her representative (designated in writing) to obtain photo-copiés of any such documents.

Section 3: The rights of employees pertaining to their Official Personnel Files as stipulated in the above Sections shall be extended to apply to an employee's training and information folder kept by the Department.

ARTICLE 23

TRANSFERS AND INTER-INSTITUTIONAL ROTATION

Section 1: It is recognized that the Employer has the right

to transfer or reassign employees whenever the interest of the Department so requires, but transfers or reassignments shall not be used as a form of reprisals.

Section 2: After fifteen (15) years of service with the Department, an employee may request to be reassigned to one of the Department's institutions of his/her choice. Employee's preference as to the shift and assignment will be taken into consideration and, as staffing needs permit, adhered to.

Section 3: Senior employee's may request a trade with another employee in another institution when a hardship in transportation is involved subject to the approval of the appropriate management officials. An answer on the request will be made within thirty (30) days.

ARTICLE 24

RETIREMENT COUNSELING

The Employer will provide counseling to employees who are of retirement age. This counseling will include information on voluntary deductions, benefits, insurance and assisting employees in preparing all necessary retirement papers.

ARTICLE 25

INCENTIVE AWARDS AND PERSONNEL ENTERPRISES COMMITTEES

Section 1: The Union may designate one (1) voting representative on both the Department's Incentive Awards and

Personnel Enterprises Committees.

Section 2: The Employer will provide a five year Department service pin for all employees who attain five (5) years of Departmental service after the effective date of this Agreement

ARTICLE 26

DISTRIBUTION OF HEALTH BENEFIT BROCHURES

The Employer agrees to make available to all employees upon entrance on duty and during open enrollment season copies of the health benefit plan brochures under the applicable FEHB program.

ARTICLE 27

PERFORMANCE COUNSELING

Section 1: If an employee is to be denied his/her periodic step increase he/she shall be so notified in advance in writing.

Section 2: Such notification shall include:

a. An explanation of each aspect of performance in which the employee's services fall below a satisfactory level and how this renders his/her performance on the job as a whole, below a satisfactory level; and,

b. A statement of the satisfactory level of performance on each of those work aspects; and,

c. Advice as to what the employee must do to bring his/her peformance up to the satisfactory level.

Section 3: Notification as stipulated above shall be made in advance of denial of the periodic step increase and the employee shall be given at least sixty (60) days to bring such performance up to a satisfactory level.

Section 4: The provisions of this article do not apply to disciplinary actions arising out of violations of orders, rules or regulations.

ARTICLE 28

PERFORMANCE RATING

The parties agree that a performance rating plan has not been established as provided in Section 1401 of the Comprehensive Merit Personnel Act. The present system used to evaluate performance will continue in use until such time as the performance rating described in Title XIV of the Act is established after negotiations with the Union(s).

ARTICLE 29

NO STRIKE OR LOCKOUT

Section 1: Under the provisions of D.C. Code Section 1-618.5 it is unlawful to participate in, authorize or ratify a strike.

Section 2: The term "strike" as used herein means a concerted refusal to perform duties or any unauthorized concerted work stoppage or slowdown.

Section 3: No lockout of employees shall be instituted by the Employer during the term of this Agreement in a strike situation except that the Department in a strike situation retains the right to close down any facilities to provide for the safety of employees, property or the public.

Section 4: In the event of a strike as defined by this Article and upon receipt of a written notice from the Employer of any strike, within eight (8) hours the Union shall publicly disavow the action by posting notices and issuing a news release to the media stating that the strike is unauthorized. Notwithstanding the acceptance of the existence of any strike, the Union will use every reasonable effort in cooperation with the Employer to terminate the strike.

Section 5: It is recognized that any employee who participates in or initiates a strike as defined herein may be subject to disciplinary action.

ARTICLE 30

DISTRIBUTION OF AGREEMENT

Section 1: The Employer agrees to have printed 3400 copies of the Agreement and distribute a copy of the Agreement to all unit members within ninety (90) days after it is printed.

Section 2: The Employer shall pay the cost of printing this Agreement up to $3,500 and the Union agrees to pay any additional cost if necessary.

Section 3: The Department agrees to extend to the Union's Principal Executive Officer or Business Representative time available at the initial orientation period for employees to discuss Union activities and the labor-management Agreement governing employee-management relations in the Department.

ARTICLE 31

WASH-UP TIME

Wash-up time of fifteen (15) minutes prior to the end of the shift will be made available to employees in Building Trades.

ARTICLE 32

LIABILITY

Section 1: The Employer shall provide, at its cost, legal representation to any employee who is named as a defendant in a civil action arising out of acts committed by the employee within the scope of his/her employment, provided however, that such representation is requested by the employee no more than five (5) calendar days after the service of process and that such representation would not

pose a conflict of interest or potential conflict of interest.

Section 2: Representation will be provided through the Office of the Corporation Counsel. The decision of the Corporation Counsel on whether to represent an employee shall be final. Should the Corporation Counsel decline to represent the employee because of a conflict of interest or potential conflict, the employee may be represented by any private attorney of his/her choice. The Employer will reimburse the employee for reasonable attorney's fees (as determined by the court) incurred in the employee's defense of the action.

Section 3: Neither representation nor attorney fee reimbursement will generally be provided where the employee has been found to have engaged in willful misconduct that has resulted in disciplinary action against him/her as a result of his/her conduct with respect to the matter in question.

ARTICLE 33

SAVINGS CLAUSE

In the event that any provision of this Agreement shall at any time be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Agreement, it being the expressed intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

ARTICLE 34

DURATION AND FINALITY

Section 1: This Agreement shall remain in full force and effect until September 30, 1987 and shall be extended for three (3) years at the option of either party upon notice to the other party between 120 or 90 days prior to September 30, 1987. However, between 120 and 90 days prior to September 30, 1988, either party may reopen the contract upon demand to the other party. The Agreement will become effective upon the Mayor' s approval subject to the provision of Section 1715 of the Act. If disapproved because certain provisions are asserted to be contrary to applicable law, the parties shall meet within thirty (30) days to negotiate a legally constituted replacement provision or the offensive provision shall be deleted.

Section 2: The parties acknowledge that this contract represents the complete Agreement arrived at as a result of negotiations during which both parties had the unlimited right and opportunity to make demands and proposals with respect to any negotiable subject or matter. The Department and the Union agree to waive the right to negotiate with respect to any other subject or matter referred to or covered or not specifically referred to or covered in this Agreement for the duration of this contract unless by mutual consent or as provided in Section 5 of the Article.

Section 3: In the event that a state of civil emergency is declared by the Mayor (civil disorders, natural disasters, etc.) the provisions of this Agreement may be suspended by the Mayor during the time of the emergency.

Section 4: All terms and conditions of employment not covered by the terms of this Agreement shall continue to be subject to the Employer's direction and control through applicable D.C. laws, rules and regulations. However, when a change of a Department Order or rule directly impacts on the conditions of employment of unit members, such impact shall be a proper subject of negotiations upon the request of the Union.

On this 23rd day of May 1986, and in witness thereto, the parties have set their signatures:

FOR THE DISTRICT OF COLUMBIA GOVERNMENT

Donald H. Weinberg, Director
Office of Labor Relations
and Collective Bargaining,
Co-Chief Negotiator

Mark H. Levitt, Deputy Director
Office of Labor Relations
and Collective Bargaining,
Co-Chief Negotiator

Susan M. McDonald, Principal
Attorney, Office of Labor
Relations and Collective
Bargaining

Michelle H. Peterson
Labor Relations Officer,
Office of Labor Relations
and Collective Bargaining

LeRoy B. Anderson, Public
Relations and Information
Officer, Department of
Corrections

FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 246

Ernie V. Jumalon, Principal
Executive Officer, International
Brotherhood of Teamsters,
Local 246, Co-Chief Negotiator

Dick Peluso, Co-Chief
Negotiator, Eastern
Conference of Teamsters

Jeffrey A. Young, Attorney
Advisor, Eastern Conference
of Teamsters

Timothy Clark, Committee
Member, Electrician Foreman,
Facilities Management

Earnest Durant, Committee
Member, Correctional Officer,
Central Facility

Al Tumminia, Assistant Administrator, Occoquan I, Department of Corrections

Daticier Roberts, Captain Detention Facility, Department of Corrections

Rahlita Hiller Labor Relations Specialist, Department of Corrections

James F. Palmer, Director Department of Corrections

Hallem H. Williams Deputy Director, Department of Corrections

Walter B. Ridley, Associate Director, Department of Corrections

Deborah Jones, Committee Member, Sergeant, Detention Facility

Robert Jones, Committee Member, Counseling Psycholgist, Occoquan II

Alex Theriault, Committee Member, Teacher, Youth Center II

David Tinsley, Committee Member, Correctional Officer, Detention Facility

Lee Wortham, Committee Member, Sergeant, Detention Facility

Frank Vaquera, Committee Member, Medical Technical Assistant, Central Facility

Betty Williams, Committee Member, Classification and Parole Officer, Central Facility

APPROVAL

This Collective Bargaining Agreement between the District of Columbia Government and Teamsters, Local 246, dated May 23, 198 has been reviewed in accordance with Section 1715(a) of the District of Columbia Comprehensive Merit Personnel Act of 1978 (D.C.Code § 1-618.15(a)) and is hereby approved this 7th day of July, 1986.

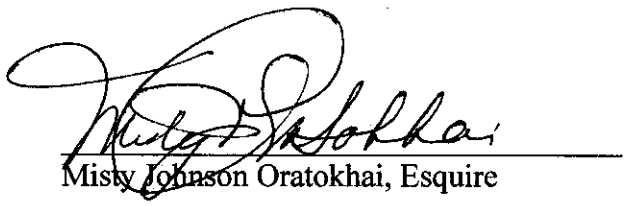
Marion S. Barry, Jr.
Mayor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 5, 2001, a true and correct copy of the **Respondent's Answer** in 02-U-05 was served via first class mail, postage prepaid and facsimile upon:

James F. Wallington, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

Odie Washington
Director, DOC
1923, Vermont Avenue
Washington, D.C. 20001



Misty Johnson Oratokhai, Esquire

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

FRATERNAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE, a labor organization **Complainants,** **DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS** **Respondent.**	**PERB Case No. 02-U-05**

RESPONDENT'S ANSWER TO UNFAIR LABOR PRACTICE COMPLAINT

The Respondent, the District of Columbia Department of Corrections ("Respondent" or "DOC"), by and through its representative, the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), hereby answer the allegations in the above-referenced Complaint, as follows:

1(a). The Respondent admits that the Fraternal Order of Police/Department of Corrections Labor Committee is a labor organization.

1(b). The Respondent admits that the following named persons are agents of the Respondent and currently occupy the positions as stated below:

Name	Position
Odie Washington	Director
James A. Anthony	Deputy Director

1(c) The Respondent denies that any other unnamed persons are agents and representatives of the Respondent and asserts that said allegation must be stricken as not including specific facts to put the Respondent on notice of any allegations against other unnamed individuals.

1(d) The Respondent denies that it has interfered with, restrained or coerced bargaining unit employees in the exercise of rights guaranteed under D.C. Code § 1-617.06 (2001 edition); 1-618.06 (2000 edition).

1(e). The Respondent denies that it discriminated in regard to the terms and conditions of employment of bargaining unit employees in order to discourage membership in the Complainant.

1(f). The Respondent denies that it engaged in bad faith bargaining.

1(g). The Respondent denies that it failed and refused to bargain in good faith by unilaterally raising the inmate population at the Central Detention Facility ("D.C. Jail"). The Respondent further states that at no time did the inmate population exceed the actual capacity of the D.C. Jail.

1(h). The Respondent denies that it failed and refused to bargain in good faith by adversely affecting bargaining unit employees in their terms and conditions of employment on or about November 10, 2001, and continuing thereafter.

1(i). The Respondent denies that it unilaterally implemented changes in the terms and conditions of bargaining unit employees.

1(j). The Respondent denies that it unilaterally implemented a plan to increase the inmate population at the D.C. Jail, but rather pursuant to D.C. Code §1-617.08(a)(6), responded to an emergency situation. Two hundred and eighty-one inmates were temporarily transferred to the D.C. Jail in order to effectuate the closure of the Lorton Complex by the Congressionally mandated deadline of December 31, 2001.

The Respondent never from November 10, through the present, exceeded the actual capacity of the Jail. Further, to date, of the 281 inmates temporarily transferred to the

D.C. Jail, 200 have been remanded into the custody of the Federal Bureau of Prisons or the U.S. Marshals Service.

1(k). The Respondent denies that it placed bargaining unit correctional officers and other bargaining unit employees at risk of any serious or substantial health and safety risk. The Respondent states that no bargaining unit or non-bargaining unit employees have been put at risk, other than those risks which are inherent or naturally associated with the nature of the job performed by individuals employed in the field of Corrections. That being said, these allegations are not unfair labor practices; and therefore are not under the jurisdiction of the PERB. Pursuant to Chapter 11 of the D.C. Code, §32-1105, the District of Columbia has established an Occupational Safety and Health Board, which among other things promulgates occupational safety and health standards in accordance with §32-1102. Under the same Chapter, at §32-1106, an Occupational Safety Board has been established, as well as an Office of Occupational Safety and Health under §32-1123. This Chapter addresses occupational safety and health standards, inspections and investigations, citations, judicial review and enforcement, as well as civil and criminal penalties. Therefore, any adjudication and/or remedies sought by the Complainant in these areas should be addressed thereto.

1(l). The Respondent denies that prior to the filing of the instant unfair labor practice Complaint that the Complainant requested to bargain over the impact and effects of any alleged changes in the terms and conditions of unit employees.

1(m). The Respondent denies that it received a request to bargain over the impact and effects of issues deemed Management's rights under D.C. Code § 1-617.08, and the impact of the exercise of such rights upon unit employees.

1(n). The Respondent denies that it has a duty to bargain over any other staff who are not included in the appropriate bargaining unit ("the Unit") represented by the Complainant, as set forth below in paragraph 3(a).

1(o). The Respondent denies the allegation that it refused to meet and/or bargain over the impact and effects upon the correctional officers and unrelated other staff. The Respondent further states that on November 21, 2001, the Complainant, during an unrelated RIF impact bargaining session, requested, as part of its RIF proposal package (Respondent's Attachment A) that all impending RIFs be suspended until the inmate population at the DC Jail is reduced to the Court ordered cap of 1,674.

During the course of the impact session in question, the union, for the first time, made a verbal reference to safety and health conditions at the jail and the impact of the Lorton transfers. Frankly, the Complainant was far more concerned with stalling impending Reductions-in-Force than addressing health and safety issues. Frankly, the health and safety issues addressed herein are merely an aside to the Complainant's ultimate goal, to delay RIFs. And, as a matter of fact, the alleged violation exceeds the statute of limitations for bringing a Complaint, pursuant to PERB Rule 520.4.

The Respondent has been and will continue to be open to engage in impact and effects bargaining at any time such request is made by the Complaint on any subject matter not impeding upon the Respondent's exercise of management's rights under D.C. Code § 1-617.08.

1(p). The Respondent denies all allegations as to its failure to correct or respond to health and safety complaints, and requests that such allegations be stricken as they are not unfair labor practices; and therefore do not fall under the jurisdiction of the PERB for adjudicatory or remedy purposes.

2. Paragraph 2 is a prayer for relief and, as such, does not require an answer. To the extent an answer is required, the Respondent denies all allegations in the instant Complaint and submits that the Complainant has failed to state a claim upon which relief may be sought.

3(a). The Respondent admits that the Union has been certified as the exclusive collective bargaining representative for the positions in existence at the time the Public Employee Relations Board (PERB), in Case No. 93-R-04, Certification No. 73 (January 12, 1994), certified the following appropriate bargaining unit (Unit):

> All employees of the D.C. Department of Corrections excluding managerial employees, confidential employees, supervisors, temporary employees, physicians, dentist and podiatrist, institutional residents (inmates) employed by the Department, or any employees employed in personnel work in other than a purely clerical capacity and employees engaged in administering provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978.

3(b). The Respondent admits that the Complainant's address and telephone number are as indicated.

4(a). The Respondent denies that William H. Dupree is a bargaining unit member or even an employee of any nature at the DOC. The Respondent further states that Dupree was separated as a result of the RIF of August 3, 2001, which was implemented by way of the Mayor's Administrative Order issued on May 14, 2001. The Respondent does admit that William Dupree serves as the Chairman of the FOP/DOC Labor Committee.

4(b). The Respondent admits that Irving Robinson is a bargaining unit employee of DC DOC, who also serves in the capacity of Treasurer for FOP/DOC Labor Committee.

4(c). The Respondent does not have sufficient information to respond to the internal union affairs of the FOP/DOCLC, and therefore, denies the allegations in paragraph 4 of the Complaint which state that Messrs. Dupree and Robinson and other officers have been elected

for a term of office from June 1, 2001 to May 31, 2002 by a secret ballot vote of the membership of the labor organization.

4(d). The Respondent admits that the Complainant's address and telephone number are as indicated and as stated in paragraph 3(b) above and in paragraph 4.

4(e). The Respondent denies all further allegations contained in Paragraph 4.

5(a). The Respondent admits that it is a subordinate agency within the executive branch of the Government of the District of Columbia under the administrative control of the Mayor.

5(b). The Respondent admits that it manages/operates correctional facilities located in the District of Columbia and the County of Fairfax, Virginia.

5(c). The Respondent admits that Odie Washington and James A. Anthony serve as Director and Deputy Director, respectively, as stated above in paragraph 1(b). The Respondent denies that any other unnamed persons are agents and representatives of the Respondent and asserts that said allegation must be stricken as not including specific facts to put the Respondent on notice of any allegations against other unnamed individuals.

5(d). The Respondent admits that the main administrative office for the DOC is located at 1923 Vermont Avenue, NW, Washington, DC 20001, and that the telephone number is (202) 673-2300.

6(a)(1). The Respondent denies that the Complainant and Respondent are parties to a collective bargaining agreement governing the working conditions of Unit employees.

6(a)(2). The Respondent further states that the parties are engaging in negotiations for an initial working conditions contract, however, the parties have not successfully concluded those negotiations at this time.

6(a)(3). The Respondent further states the terms and conditions of employment have been established through past practice as reflected in the former collective bargaining agreement between the Respondent and the Teamsters, which expired in 1990. (Respondent's Attachment B).

6(b). The Respondent denies that there are approximately 1,400 bargaining unit employees. The Respondent asserts that there are considerably fewer Unit employees due to ongoing reductions-in-force at the DOC over the past several years as a result of §11201 of the National Capital Revitalization Self-Government and Improvement Act of 1997 (PL-105-33; D.C. Code 24-1201).

6(c). The Respondent restates its answer to paragraph 3(a) above and admits that the Complainant is the certified collective bargaining representative for employees in the Unit set forth in paragraph 3(a) above.

6(d) The Respondent denies all other allegations in paragraph 6, and further states that the Attachment to the Complaint labeled as Exhibit A is a fabricated document apparently cobbled together from a contract with a prior labor representative.

6(e). The Respondent denies any knowledge of the document attached as Complainant's Exhibit B and states that there are serious questions as to the origin and authenticity of the attached "Memorandum of Understanding".

7(a). The Respondent denies paragraph 7 of the Complaint based on its lack of knowledge of internal union affairs.

7(b). The Respondent further denies that the Complainant is the exclusive representative of Unit employees for all matters within the scope of D.C. § 1-618.11 and other relevant provisions of the Comprehensive Merit Personnel Act ("CMPA").

8(a). The Respondent admits that the Complainant filed complaints with the D.C. Office of Occupational Safety and Health.

8(b). The Respondent admits that it received copies of some complaints that were filed with and fall under the jurisdiction of the D.C. Office of Occupational Safety and Health.

8(c). The Respondent admits that on September 25, 2000, the U.S. Public Health Service, Centers for Disease Control, issued an investigative report of the findings of the National Institute of Occupational Safety and Health (NIOSH).

8(d). The Respondent admits that the report found that indoor environmental quality (IEQ) problems were found relating to inadequate ventilation in the bubbles of all cellblocks evaluated.

8(e). The Respondent denies all other allegations in paragraph 8 of the Complaint.

9. The Respondent admits that the Complainant submitted, as an attachment to the Complaint, a document designated Exhibit D. The Respondent denies all other allegations of paragraph 9.

10(a). The Respondent denies all allegations in paragraph 10 of the Complaint, except that the Complainant's Exhibit E was forwarded to J. Patrick Hickey, Esq. by the Director of the Department of Corrections, Odie Washington.

10(b). The Respondent states that the inmate population was increased on November 10, 2001, with prior notice forwarded to the Complainant. Further the Respondent states that the Complainant did not request to bargain over the impact and effects of the exercise of its managements rights.

11. The Respondent denies all allegations contained in paragraph 11 of the Complaint.

12(a). The Respondent denies that it immediately increased the inmate population at the D.C. Jail. The Respondent provided the Complainant notice and an opportunity to bargain upon request.

12(b). The Respondent denies that the transfer of inmates and the reassignment of staff necessary to adequately run the facility, imposed any irreparable undue hardship upon employees. Further, should any hardship have arisen, such instances were addressed in the Complainant's "Exhibit H".

12(c). The Respondent denies all other allegations contained in paragraph 12 of the Complaint.

13. The Respondent denies all allegations in paragraph 13 of the Complaint. Further, the Respondent states that the Complainant has never requested to engage in impact and effects bargaining over health and safety issues as they relate to the D.C. Jail until, Wednesday, November 21, 2001, when a verbal reference was made to such issues, after the instant Complaint was already filed.

13(b). The Complaint in the Public Employee Relations Board ("PERB") Case 01-U-21, was withdrawn by the Complainant. Further, even if, for the sake of arguendo, Case No. 01-U-21 had not been withdrawn, prior to its withdrawal, it was consolidated with 01-U-28 and 32, and deals with matters that do not impact the instant Complaint. The Respondent even further states that PERB Case No. 01-N-01 addresses an issue of negotiability, which also does not offer proof of failure to bargain as to health and safety issues at the D.C. Jail, which, as noted previously herein, have never been raised prior to November 21, 2001.

14. The Respondent denies all allegations contained in Paragraph 14.

15. The Respondent denies all allegations contained in Paragraph 15.

16. The Respondent denies all allegations contained in Paragraph 16.

17. Paragraph 17 is a prayer for relief and, as such, does not require an answer. To the extent an answer is required, the Respondent denies all allegations in paragraph 17 of the Complaint.

18. The Respondent admits that the FOP/DOC Labor Committee and the Respondent are parties to unfair labor practice proceedings and other proceedings. However, the Hearing Examiner's Report and Recommendations was issued in Consolidated PERB Case Nos. 00-U-36 and 40, following the Hearing Examiner's dismissal of all allegations contained therein. Following the filing of exceptions by the Complainant, the matter is currently before the Board for final review.

AFFIRMATIVE DEFENSES

19. First Affirmative Defense

The Complainant challenges conduct that is expressly a right solely reserved to Management pursuant to the laws of the District of Columbia under D.C. Code § 1-617.08, which provides that management shall retain the sole right, in accordance with applicable laws and rules and regulations:

(1) To direct employees of the agencies;
(2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take disciplinary action against employees for cause;
(3) To relieve employees of their duties because of lack of work or other legitimate reasons;
(4) To maintain the efficiency of District government operations entrusted to them;
(5) To determine the mission of its agency, its budget, its organization, the number of employees, and the number, types, and grades of positions of employees assigned to an organizational unit, work project, or tour of duty and the technology of performing its work; or its internal security practices; and
(6) To take whatever actions may be necessary to carry out the mission of the government in emergency situations.

Further, the Respondent is required to effectuate the closure of the Lorton Complex in Fairfax County, Virginia, under §11201 of the National Capital Revitalization and Self Government Improvement Act of 1997 (PL-105; D.C. Code §24-1201). In order to comply with said directive, the Respondent faced an emergency situation and was forced to temporarily transfer Lorton inmates to the D.C. Jail until such time as their imminent removal and transfer to institutions across the country. The vast majority of these inmates have since been remanded into the custody of the Federal Bureau of Prisons or the U.S. Marshals Service, and are no longer housed at D.C. Jail.

Absent such action, the Respondent would not have met the Congressionally mandated deadline for the closure of the Lorton Complex, December 31, 2001. Nevertheless, the Respondent met its duty to bargain by providing the Complainant with notice and an opportunity to bargain. The Complainant, however, failed to demand to bargain over the impact and effects until after the instant unfair labor practice was filed.

Pursuant to D.C. Code §1-605.02, (Powers of the Board), the Board has been granted a number of express powers, but does not have jurisdiction over the Respondent's exercise of management rights under D.C. Code §1-617.08 or over the implementation of a Congressionally mandated downsizing. Therefore, no claim has been made upon which PERB can grant relief.

20. **Second Affirmative Defense**

The Complainant falsely alleges violations by misrepresenting the facts involving its assertion that prior to November 21, 2001, it requested to engage in impact and effects bargaining regarding health and safety issues at the D.C. Jail. The Respondent has repeatedly engaged in impact and effects bargaining over numerous issues associated with the closure of Lorton. Never, prior to November 21, 2001, has the Complainant, within the scope of impact

bargaining requested bargaining on the subject matter noted herein. Without a request to bargain, a Party cannot be held responsible for lack thereof.

21. **Third Affirmative Defense**

The Complainant, in this instance, as well as in a number of instances in the past, has failed to attempt to discuss and engage in bargaining over the substantive issues which they allege affect the terms and conditions of employment for bargaining unit employees in the instant matter, but would rather in bad faith, filed an unfair labor practice. The Respondent submits that the Complainant has acted in a pattern of bad faith at every opportunity. The Complainant's bad faith is further illustrated by the Union's tactic of failing to request to engage in bargaining, or seeking to reach mutually beneficial resolutions to outstanding issues. The Respondent further contends that the continuous dilatory tactics employed by the Complainant, which include frivolous unfair labor practice allegations, as well as, other allegations outside the jurisdiction of PERB, are a waste of resources and an abuse of process deserving of PERB sanctions.

22. **Fourth Affirmative Defense**

The Complainant raises a number of allegations, which in fact do not fall under the jurisdiction of the PERB. The D.C. Code Chapter 11, §§32-1101 through 32-1124, established the D.C. Occupational Safety and Health Board, Commission and Office, as well as the duties and responsibilities of such entities, which are the appropriate forums for the concerns raised herein by the Complainant. The PERB does not have the authority to adjudicate such matters, nor is there any remedy, which can be crafted by the PERB based upon those allegations that are not unfair labor practices.

23. **Fifth Affirmative Defense**

All matters, which occurred more than 120 days after the date on which the alleged violations occurred, are outside the statute of limitations and accordingly must be dismissed pursuant to the PERB Rule 520.4.

MOTION TO DISMISS AND MOTION IN LIMINE

The Respondent hereby moves:

1. For dismissal of all allegations relating to matters which are outside of the jurisdiction of the PERB; and,

2. For dismissal of all matters that are outside the statute of limitations.

Dated at Washington, D.C. this 5th day of December, 2001.

Respectfully submitted,
For Respondent:

District of Columbia Office of Labor
Relations and Collective Bargaining
441 4th Street, N.W.
Washington, D.C. 20001
Tel: (202) 724-4953
Fax: (301) 727-6887

Misty Johnson Oratokhai, Esq.
Labor Relations Specialist

Mary E. Leary, Attorney
Director

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 5, 2001, a true and correct copy of the **Respondent's Answer** in 02-U-05 was served via first class mail, postage prepaid and facsimile upon:

James F. Wallington, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

Odie Washington
Director, DOC
1923, Vermont Avenue
Washington, D.C. 20001

Misty Johnson Oratokhai, Esquire

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: FRATERNAL ORDER OF POLICE/ DEPARTMENT OF CORRECTIONS LABOR COMMITTEE, a labor organization; Complainant, v. DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS, Respondent.	02-U-05 PERB Case No. ~~01-U-~~

UNFAIR LABOR PRACTICE COMPLAINT

Complainant Fraternal Order of Police/Department of Corrections Labor Committee ("FOP/DOC Labor Committee"), a labor organization, files the following unfair labor practice complaint, pursuant to D.C. Code § 1-605.2(3) and PERB Rule 520, against the District of Columbia Department of Corrections ("DC DOC"), its agents and representatives, for violations of D.C. Code § 1-618.4(a)(1), (3) and (5). Complainant alleges as follows:

Summary of Unfair Labor Practices

1. Respondent's agents and representatives, including but not limited to, DC DOC Director Odie Washington and DC DOC Deputy Director James A. Anthony, have interfered with, restrained and coerced DC DOC bargaining unit employees in the exercise of rights guaranteed under D.C. Code § 1-618.6, discriminated in regard to the terms and conditions of employment of bargaining unit

employees in order to discourage membership in the FOP/DOC Labor Committee and engaged in bad faith bargaining with the representatives of Complainant by unilaterally raising the inmate population at the Central Detention Facility ("D.C. Jail") and adversely affecting bargaining unit employees in their terms and conditions of employment on or about November 10, 2001 and continuing. On November 10, 2001, Respondent Department of Corrections supervisors and agents unilaterally implemented a plan to increase the inmate population of the D.C. Jail, thereby placing the bargaining unit correctional officers and other bargaining unit employees at risk to serious and substantial health and safety risks. Such risks include the dangers of overcrowding of the D.C. Jail reflected in the Orders of July 13, 1985 and August 22, 1985 issued by the United States District Court for the District of Columbia in Campbell v. McGruder. See e.g. Campbell. V. McGruder, 580 F. 2d 521, 536-543 (D.C. Cir. 1978); Campbell v. McGruder, 554 F. Supp. 562 (D.D.C. 1982). Despite verbal and written demands by FOP/DOC Labor Committee representatives seeking to bargain regarding this increase in the inmate population at the D.C. Jail, Respondents refused to meet and bargain regarding the impact and effects upon the correctional officers and other staff. Similarly, Department of Corrections supervisors and agents have refused to correct, or otherwise respond to health and safety complaints filed by FOP/DOC Labor Committee arising from uncorrected, hazardous occupational health conditions at the D.C. Jail in violation of D.C. Code § 36-228 and D.C. Code § 36-1203(a)(1) and (2).

2. Complainant requests remedy, pursuant to D.C. Code § 1-618.13, including, but not limited to an order requiring Respondent to bargain with FOP/DOC Labor Committee on the mandatory issues of health and safety of the working conditions at the D.C. Jail caused by deliberate overcrowding; an order directing no reduction in the correctional officer complement at the D.C. Jail pending resolution of such bargaining; direct compliance by Respondent, its agents and representatives with the provisions of D.C. Code § 1-618.6; an order that Respondent cease and desist from conduct prohibited by D.C. Code § 1-618.4(a)(1), (3) and (5) and make Complainant and all adversely affected bargaining unit employees whole for adverse economic effects suffered as the result of Respondent's violations of D.C. Code § 1-618.4(a)(1), (3) and (5).

Parties

3. Complainant Fraternal Order of Police/Department of Corrections Labor Committee ("FOP/DOC Labor Committee") is a labor organization certified to represent a unit of employees employed by the District of Columbia Department of Corrections ("DC DOC") pursuant to D.C. Code § 1-618.10 on January 12, 1994 in PERB Case No. 93-04, Certification No. 73. The current address and telephone number of FOP/DOC Labor Committee is 711 4th Street, N.W., Washington, D.C. 20001, telephone number (202) 737-3505.

4. William H. Dupree and Irving Robinson are bargaining unit employees of DC DOC and hold the duly-authorized position of Chairman and Treasurer, respectively, of FOP/DOC Labor Committee. Mr. Dupree, Mr. Robinson and the

other officers of FOP/DOC Labor Committee have been elected for a term of office of June 1, 2000 to May 31, 2002 by a secret ballot vote of the membership of the labor organization pursuant to PERB Opinion No. 605. The current business address and telephone number for William H. Dupree, Chairman of FOP/DOC Labor Committee and Irving Robinson, Treasurer of FOP/DOC Labor Committee is 711 4th Street, N.W., Washington, D.C. 20001, telephone number (202) 737-3505.

5. Respondent District of Columbia Department of Corrections is a subordinate agency within the executive branch of the Government of the District of Columbia under the administrative control of Mayor Anthony A. Williams. Respondent DC DOC manages and operates correctional facilities located within the District of Columbia and the County of Fairfax, Commonwealth of Virginia. Agents and representatives of Respondent DC DOC include, but are not limited to:

Odie Washington, Director
James A. Anthony, Deputy Director

The current address and telephone number for Respondent DC DOC, and its agents and representatives, is 1923 Vermont Avenue, N.W., Washington, D.C. 20001, telephone number (202) 673-2300.

Facts Constituting Unfair Labor Practices

6. Complainant FOP/DOC Labor Committee and Respondent DC DOC are parties to a current collective bargaining agreement governing the working conditions of approximately 1,400 employees of the Department of Corrections pursuant to the certification of January 12, 1994, referenced above. The terms of the current Working Conditions Agreement are set out in Exhibit A, appended to this

Complaint entitled, "Agreement Between Fraternal Order of Police and the Government of the District of Columbia Department of Corrections" and in Exhibit B appended to this Complaint entitled, "Memorandum of Understanding between District of Columbia Department of Corrections and FOP/DOC Labor Committee," dated December 20, 1994.

7. On June 1, 2000, William H. Dupree and Irving Robinson were duly-installed as Chairman and Treasurer, respectively of FOP/DOC Labor Committee and were recognized by Respondent DC DOC as the representative of FOP/DOC Labor Committee for all matters within the scope of D.C. Code § 1-618.11 and other relevant provisions of the Comprehensive Merit Personnel Act ("CMPA").

Refusal to Bargain Regarding Health and Safety

8. In June, July, September and October, 2000, FOP/DOC Labor Committee filed health and safety complaints with the D.C. Office of Occupational Safety and Health regarding hazardous occupational health conditions at the receiving and discharge (R&D) area of the D.C. Jail. Such complaints were also made to Respondents. On September 25, 2000, the United States Public Health Service, Centers for Disease Control, issued an investigative report of findings of the National Institute of Occupational Safety and Health (NIOSH). See, Exhibit C attached to this Complaint. Such report determined that a potential health and safety hazard existed in the R&D areas of the D.C. Jail conducive to Legionella growth and indoor environmental quality (IEQ) problems were found relating to inadequate ventilation in the bubbles of all cellblocks evaluated. See, Exhibit C at pages 7-8. Respondent

has refused to correct the conditions found hazardous in the NIOSH report, such unsafe conditions continue to exist, and Respondent supervisors and agents have failed to meet and bargain with Complainants representatives in order to reach agreements to correct such hazards.

9. On November 5, 2001, FOP/DOC Labor Committee Chairman William H. Dupree filed a formal health and safety Complaint with the Office of the Mayor regarding specific failure to correct the unsafe conditions at the D.C. Jail. See, Exhibit D, Occupational Health and Safety Complaint to Mayor Williams dated November 5, 2001.

10. On November 9, 2001 and continuing thereafter, Respondent supervisors and agents have increased the inmate population of the D.C. Jail beyond the capacity found minimally safe under prior proceedings before the United States District Court for the District of Columbia in Campbell v. McGruder, Civil Action # 1462-71(WBB). See, Exhibit E, correspondence dated November 13, 2001 from Odie Washington to J. Patrick Hickey, Esq. and others.

11. Such action of immediately increasing the inmate population at D.C. Jail was taken by Respondent despite specific, written demands by FOP/DOC Chairman William H. Dupree to meet and bargain regarding such possible inmate transfer. See, Exhibit F, correspondence dated April 13, 2001 from William H. Dupree to Odie Washington, and Exhibit G, correspondence dated November 9, 2001 from William H. Dupree to Mayor Anthony A. Williams.

12. Such action of immediately increasing the inmate population at D.C. Jail has caused Respondent to admit that there exists a "negative" impact in providing the required support for population management and the employees are experiencing "undue hardships" due to the lack of notice of impact upon the working conditions of bargaining unit employees. See, Exhibit H, memorandum dated November 8, 2001 from DC DOC Deputy Director James A. Anthony to Concerned Staff. The overcrowding at the D.C Jail has created immediate hazards to correctional officers employed at those workstations. See, Exhibit I, Declaration of Correctional Officer Irving Robinson, dated November 14, 2001.

13. Respondent supervisors and agents have planned continued reductions-in-force of correctional officers servicing the D.C. Jail without complying with the obligation to bargain with FOP/DOC Labor Committee regarding mandatory issues of health and safety of the correctional officers and staff at the D.C. jail. See, Record in PERB Cases 01-U-21, 01-U-28, 01-U-32 and 01-N-01. Unless Respondent halts further reductions-in-force currently planned, the health and safety conditions at the D.C. Jail will continue to deteriorate in violation of the rights of bargaining unit employees protected by D.C. Code § 1-618.6.

14. By and through the conduct alleged in paragraphs 1, 8, 9, 11, 12 and 13 above, Respondent DC DOC has interfered with, restrained and coerced employees represented by Complainant FOP/DOC Labor Committee, including, but not limited to, correctional officers and staff at the D.C. Jail in the exercise of the rights

guaranteed by D.C. Code § 1-618.6 and subchapter XVIII of the CMPA in violation of D.C. Code § 1-618.4(a)(1).

15. By and through the conduct alleged in paragraphs 1, 8, 9, 11, 12 and 13 above, Respondent DC DOC is discriminating in the tenure of employment and the terms and conditions of employment of correctional officers and staff employed at the D.C. Jail and all other adversely affected bargaining unit employees in violation of D.C. Code § 1-618.4(a)(3).

16. By and through the conduct alleged in paragraphs 1, 8, 9, 11, 12 and 13 above, Respondent DC DOC has failed and refused to bargain in good faith with FOP/DOC Labor Committee as representative of adversely affected bargaining unit employees in violation of D.C. Code § 1-618.4(a)(5) regarding inmate transfers, population increases and health and safety conditions at the D.C. Jail affecting terms and conditions of employment.

Relief Sought

17. Complainant requests all remedies pursuant to D.C. Code §1-618.13, including, but not limited to, halting all contemplated reductions-in-force as to all adversely affected bargaining unit employees; ordering immediate bargaining with Complainant regarding health and safety conditions at the D.C. Jail; making each bargaining unit employee whole for all adverse economic effects suffered as a result of Respondent's violations alleged herein; issuance of an order compelling Respondent, its agents and representatives, to desist from conduct prohibited under subchapter XVIII of the CMPA; requiring the payment of reasonable costs, including

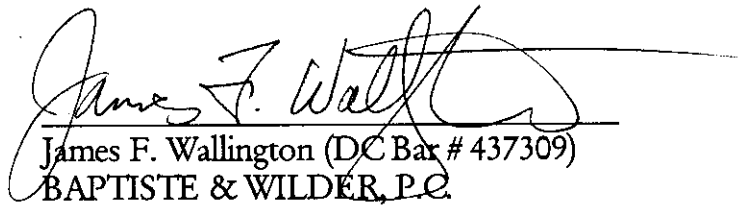
attorney fees, incurred by Complainant in this matter, and awarding such other remedies and relief as may be just and proper.

Related Proceedings

18. Complainant FOP/DOC Labor Committee and Respondent DC DOC are parties to unfair labor practice proceedings and other proceedings, currently active before PERB in the following cases:

PERB Case No. 00-U-34
PERB Case No. 00-U-36
PERB Case No. 00-U-40
PERB Case No. 01-U-07
PERB Case No. 01-U-16
PERB Case No. 01-U-21
PERB Case No. 01-N-01
PERB Case No. 01-U-28
PERB Case No. 01-U-32

Respectfully submitted,



Date: November 20, 2001

James F. Wallington (DC Bar # 437309)
BAPTISTE & WILDER, P.C.
1150 Connecticut Ave, N.W., Suite 500
Washington, DC 20036
(202) 223-0723

Attorney for FOP/DOC Labor Committee

CERTIFICATE OF SERVICE

I, James F. Wallington, do hereby certify that I have served the foregoing Unfair Labor Practice Complaint upon representatives of Respondent District of Columbia Department of Corrections, pursuant to PERB Rule 501.16 as indicated below on this 20th day of November, 2001.

VIA FACSIMILE NO. (202) 673-2259
AND FIRST CLASS MAIL

Gregory E. Jackson, Esq.
General Counsel
D.C. Department of Corrections
1923 Vermont Avenue, N.W.
Washington, DC 20001

VIA FACSIMILE NO. (202) 727-6887
AND FIRST CLASS MAIL

Mary E. Leary, Esq.
Director, Office of Labor Relations
& Collective Bargaining
441 Fourth Street, N.W., Suite 200 South
Washington, DC 20001

James F. Wallington

EXHIBIT A

Agreement Between Fraternal Order of Police and the Government of the District of Columbia Department of Corrections.

EXHIBIT B

Memorandum of Understanding between District of Columbia Department of Corrections and FOP/DOC Labor Committee, dated December 20, 1994.

EXHIBIT C

Investigative report of findings of the National Institute of Occupational Safety and Health (NIOSH) dated September 25, 2000.

EXHIBIT D

Occupational Health and Safety Complaint to Mayor Williams dated November 5, 2001.

EXHIBIT E

Correspondence dated November 13, 2001 from Odie Washington to J. Patrick Hickey, Esq. and others.

EXHIBIT F

Correspondence dated April 13, 2001 from William H. Dupree to Odie Washington.

EXHIBIT G

Correspondence dated November 9, 2001 from William H. Dupree to Mayor Anthony A. Williams.

EXHIBIT H

Memorandum dated November 8, 2001 from DC DOC Deputy Director James A. Anthony to Concerned Staff.

EXHIBIT I

Declaration of Correctional Officer Irving Robinson, dated November 14, 2001.

EXHIBIT A

Agreement Between Fraternal Order of Police and the Government of the District of Columbia Department of Corrections.

AGREEMENT BETWEEN

FRATERNAL ORDER OF POLICE

AND THE

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS

TABLE OF CONTENTS

PREAMBLE

Section 1: This Agreement is entered into between the District of Columbia Government (Employer) and Fraternal Order of Police-Department of Corrections Labor Committee (Union).

Section 2: The Parties to this Agreement hereby recognize that the collective bargaining relationship reflected in this Agreement is of mutual benefit and the result of good faith collective bargaining between parties. Further, both parties agree to establish and promote a sound and effective labor-management relationship in order to achieve mutual understanding of practices, procedures and matters affecting conditions of employment and to continue working toward this goal.

Section 3: The parties hereto affirm without reservations the provisions of this Agreement and agree to honor and support the commitments contained herein. The parties agree to resolve whatever differences may arise between them through the avenues for resolving disputes agreed to through negotiations of this Agreement.

Section 4: It is the intent and purpose of the parties hereto to promote and improve the efficiency and quality of services provided by the Department. Therefore, in consideration of mutual covenants and promises herewith contained, the Employer and the Union do hereby agree as follows:

ARTICLE 1

RECOGNITION

The Employer recognizes the Union as the exclusive representative of all employees of the D.C. Department of Corrections excluding managerial employees, confidential employees, supervisors, temporary employees or any employees engaged in personnel work in other than a purely clerical capacity and institution residents (inmates) employed by the Department.

ARTICLE 2

MANAGEMENT RIGHTS

Section 1: Management rights as prescribed in the Comprehensive Merit Personnel Act,. Section 1708 (a) and (b) are as follows:

a. to direct employees of the agency;

b. to hire, promote, transfer, assign and retain employees in positions within the agency and to suspend, demote, discharge or take other disciplinary action against employees for cause;

c. to relieve employees of duties because of lack of work or other legitimate reason;

d. to maintain the efficiency of the District Government operations entrusted to them;

e. to determine the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work, or its internal security practices; and,

f. to take whatever actions may be necessary to carry out the mission of the District Government in emergency situations.

All matters may be deemed negotiable except those that are proscribed in Title 17 of the Act. Negotiations concerning compensation are authorized to the extent provided in Section 1716 of the Act.

Section 2: The parties recognize that such management rights are beyond the scope of collective bargaining unless addressed in a separate Article of this Agreement.

ARTICLE 3

EMPLOYEE RIGHTS

Section 1: The Employer and the Union agree that employees have the right to join, affiliate with, or refrain from joining the Union. However, all employees will be financially responsible to the Union as provided for in Article 4. The right extends to participating in the management of the Union, or acting as a representative of the Union.

Section 2: The terms of this contract do not preclude any employee from bringing matters of personal concern to the attention of the appropriate officials in accordance with applicable laws, regulations and procedures.

Section 3: An employee may handle his own grievance and/or select his own representative; however, a Union representative may also be present if the Union so desires.

Section 4: It is understood that the employees in the bargaining unit shall have full protection of all articles in this contract as long as they remain in the unit.

Section 5: Supervisors shall not impose any restraint, interference, coercion or discrimination against employees in the exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, the prosecution of grievances, and labor-management cooperation, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.

ARTICLE 4

UNION SECURITY AND UNION DUES DEDUCTIONS

Section 1: The terms and conditions of this Agreement shall apply to all employees in the bargaining unit without regard to Union membership. Employees covered by this Agreement have the right to join or refrain from joining the Union.

Section 2: The Employer agrees to deduct Union dues from each employee's bi-weekly pay upon authorization on D.C. Form 277. Union dues withholding authorization may only be canceled upon written notification to the Union and the Employer thirty (30) days prior to each annual anniversary date (effective date) of this Agreement regardless of the provisions of the DC-277 Form. When Union dues are cancelled, the Employer shall withhold a service fee in accordance with Section 3 of this Article.

Section 3: Because the Union is responsible for representing the interest of all unit employees without discrimination and without regard to Union membership (except as provided in Section 5 below), the Employer agrees to deduct a service fee from each non-union member's bi-weekly pay without a written authorization. The service fee and/or Union dues withheld shall be transmitted to the Union, minus a collection fee of seven cents (.07) per deduction per pay period. Upon showing by the Union that fifty-one percent (51%) of the eligible employees for which it has certification are Union members, the Employer shall begin withholding, no later than the second pay period after this Agreement becomes effective and the showing of fifty-one percent (51%) is made, a service fee applicable to all employees in the bargaining unit who are not Union members. The service fee withholding shall continue for the duration of this Agreement. Payment of dues or service fees through wage deduction shall be implemented in accordance with procedures established by the Employer and this Article. Employees who enter the bargaining unit where a service fee is in effect shall have the service fee or Union dues withheld within two (2) pay periods of his/her date of entry on duty or execution of DC-277 form authorization, whichever applicable.

Section 4: The service fee applicable to non-union members shall be equal to the bi-weekly union membership dues that are attributable to representation.

Section 5: Where a service fee is not in effect, the Union may require that any employee who does not pay dues or a service fee shall pay all reasonable costs incurred by the Union in representing such employee(s) in grievance or adverse action proceedings in accordance with provisions of the Comprehensive Merit Personnel Act.

Section 6: The Employer shall be indemnified or otherwise held harmless for any good faith error or omissions in carrying out the provisions of this Article.

Section 7: Payment of dues or service fees shall not be a condition of employment.

ARTICLE 5

UNION-MANAGEMENT MEETINGS

Section 1: It is agreed that the Department and the Union shall meet every two (2) months or as otherwise agreed to by the parties to further labor-management cooperation as a standing Labor-Management Committee. The Department and the Union shall each select seven (7) members and alternates to serve on this Committee.

Section 2: It shall be the function of this Labor-Management Committee to discuss different points of view and exchange views on working conditions, terms of employment, matters of common interest or other matters which either party believes will contribute to improvement in the relations between them within the framework of this Agreement. It is understood that appeals, grievances or problems of individual employees shall not be a subject of discussion at these meetings, nor shall the meetings be for any other purpose which will modify, add to , or detract from the provisions of this Agreement. Other meetings of the Committee may be scheduled as the need arises upon the request of either party at times mutually agreed upon.

Section 3: The employer further agrees that three (3) representatives of the Union and the Department (including the Director or his designee from his office) will meet monthly at each institution as a standing Labor-Management Committee to discuss and review common interests for promoting labor-management cooperation at the institution level. Other meetings may be held at the institution level when the need arises and as mutually agreed upon

by the parties.

Section 4: The Department and the Union agree to exchange agendas of topics to be discussed at least five (5) days in advance of the date set for the meetings. If unusual circumstances or timeliness of events do not allow for discussion of items on the agenda submitted in advance of the meeting, the issues thus presented may either be discussed by both parties or tabled for later discussion by either party.

Section 5: The members of the standing Labor-Management Committee appointed by the Union shall be granted official time to attend the above conference when the conferences occur during the regular working hours of the employees. The Union shall notify the Department at least one (1) day in advance of any scheduled meeting if an alternate will attend in the absence of the appointed member.

Section 6: A brief summary of the matters discussed and any understanding reached will be prepared by the Employer and furnished to the Union prior to the next meeting.

Section 7: The implementation of new policies or procedures which are subject to the provisions of this Agreement shall not be made until prior consultation with the Union.

ARTICLE 6

EQUAL EMPLOYMENT OPPORTUNITY

Section 1: The Department agrees to cooperate in providing equal employment opportunity for all persons, to prohibit discrimination because of age, sex, race, creed, color or national origin and any other statutory prohibitions.

Section 2: The Department agrees to provide the necessary procedures to process complaints of discrimination in accordance with the appropriate legal authority outside the realm of this Agreement. Such appeals/complaints shall be handled exclusively by such authority.

Section 3: The Department and the Union agree that provisions are authorized that provide disciplinary action against supervisors or employees which have been found guilty of discrimination.

Section 4: The Union will be given the opportunity, upon its request, to make recommendations to the Department prior to publication of equal Employment Opportunity regulations, plans of action, and in the selection of Equal Employment Opportunity Counselors.

Section 5: The Union will assist the Department in supporting the Equal Employment Opportunity Program. The Union will notify the Department of any practices which they believe are discriminatory and will submit their recommendation to improve the program.

Section 6: Sexual harassment is defined by law and regulations, and use of coercive sexual behavior to control, influence or affect the career, salary or job of an employee is prohibited.

ARTICLE 7

UNION REPRESENTATION

Section 1: The Employer will recognize unit employee representatives (stewards) not to exceed 57, designated as such by the Union, and non-employee Union officials as the duly authorized representatives of the Union. Stewards shall be authorized to engage in permissible Labor-Management business (as defined by this Article) only within the work area and shift designated by the Union and as agreed to by Management.

Section 2:

a. The Union will furnish the Employer, in writing, with the names, shifts and work locations of elected stewards and submit changes as they occur.

b. When a steward who has been designated as such in writing is absent from work, the Union may designate an alternate to temporarily serve as steward during the absence of the regular steward. The Union will notify the appropriate supervisor of the designated alternate and the specified time period.

Section 3: Neither the Union nor any employee in the bargaining unit shall conduct Union business or carry on Union activities (soliciting members, distributing literature, etc.) on Employer time. Distribution of literature or other contracts pertaining to Union business will be conducted during the non-work time of both

stewards and members being contacted. There is to be no interference by unit members in a non-duly status with other employees' performance of official duties during working hours.

Section 4: When it is necessary for contacts to be made between employees and stewards to transact permissible Labor-Management business as defined in this Article, both the steward and the employee shall request approval from their immediate supervisor(s) to be relieved from duty for this purpose. The supervisor(s) shall be informed of the purpose of the request, the employee's destination if he/she is leaving the immediate work area, the amount of time needed and the employee he/she desires to contact. The steward, if eligible to be relieved from duty, shall first notify his/her supervisor that the employee he/she wishes to meet with has also received approval to be relieved from duty. If the request to be relived from duty is disapproved by either supervisor, another date and time will be arranged that is agreeable amongst all parties. The Employer agrees that permission for a steward to participate in permissible Labor-Management business will not be unreasonably denied, however, the union and employees recognize that workload and scheduling considerations will not always allow for release of employees from their assignments as requested.

Section 5: Stewards will be permitted official time to engage in the following labor-management business:

a. Assists employees in the preparation and presentation of grievances or appeals;

b. Arrange for witnesses and to obtain other information or assistance relative to a grievance or arbitration appeal; and,

c. Consult with department officials as provided in Article 5.

Section 6: The Union agrees that grievances should preferably be investigated, received, processed and presented during the first and last hour of the grievant's scheduled tour of duty, unless otherwise authorized.

Section 7: Only one (1) steward shall be recognized as the representative for each grievance.

Section 8: Official time may be granted upon written request to the appropriate Assistant Director or his/her designee for a designated steward to attend scheduled meetings with management officials outside the Department. Such meetings may include representation of employees in hearings or appeals conducted outside the scope of this Agreement. Permission to attend such meetings shall not be unreasonably denied. However, should time constraints make it impracticable to provide advance written notification, the steward shall obtain verbal permission from the appropriate Assistant Director or his/her designee to attend such scheduled meetings(s). If the Assistant Director or his/her designee is unavailable, the steward shall obtain permission from the appropriate Administrator or Office Chief.

Section 9: The shop steward shall be afforded the opportunity to address unit employees at roll call to explain labor-management business unless conditions in the institution dictate otherwise. Such time shall not exceed five (5) minutes and may be utilized up to three (3) times per week, each shift.

Section 10: Stewards assigned tours of duty other than day shift and scheduled days off shall have their assigned tour of duty and scheduled day off (if applicable) changed to coincide with the time of a grievance hearing. However, no overtime or other such form of compensation shall be allowed for attendance at any such hearing.

Section 11: This Article does not preclude employees from selecting someone other than a Union representative to represent him/her in a grievance, except that no rival organization may represent an employee in the negotiated Grievance Procedure, and provided also that if other than a Union representative (excluding management and supervisory officials) is used, a representative of the exclusive organization must be given an opportunity to be present at any meeting held to resolve the grievance.

ARTICLE 8

USE OF OFFICIAL FACILITIES AND SERVICES

Section 1: The Department agrees to permit distribution of notices and circulars sponsored by the Union to all employees in the unit through regular distribution procedures provided that the Union receives prior approval from the Department.

Section 2: The Department agrees to provide meeting facilities whenever available upon request to the Director or appropriate facility official. Any cost incurred for the cleaning or maintenance of such facilities after such meeting will be borne by the Union.

Section 3: Under no circumstances will Department manpower or supplies be utilized in support of or for internal Union business except as provided elsewhere in this Article.

Section 4: The Department agrees to make every effort to provide a private area for the employee and the steward when engaging in grievance handling pursuant to Article 7, Section 5a. of this Agreement.

Section 5: Two copies of Departmental Service and institutional directives, rules and regulations relative to terms and conditions of employment will be provided the Union.

Section 6: The Department agrees to designate bulletin boards for the exclusive use of the Union in each facility where available, and to provide space on designated boards in appropriate work areas.

Section 7: All material posted on Union bulletin boards shall be readily identifiable as official Union literature by the use of official letterhead, logo or signature of the Union official.

ARTICLE 9

EMPLOYEE ROSTERS

Section 1: Upon written request to the appropriate Assistant Director, on an annual basis, the Union will be provided with a list of names, titles and grades of unit employees in each institution or office.

Section 2: On a monthly basis the Union will be provided, by each institution or office, a list of names, titles and grades of unit employees appointed, separated or transferred during the preceding month.

Section 3: - Procedure:

a. Step 1: The aggrieved employee, with or without a Union representative, shall orally present and discuss the grievance with the employee's supervisor within ten (10) days of the occurrence of the event giving rise to the grievance or within ten (10) days of the employee's knowledge of such event. The supervisor will make a decision on the grievance and reply to the employee and/or his/her representative within five (5) days after oral presentation of the grievance. In unusual circumstances, where the grievant cannnot be physically present, a Union representative, authorized in writing by the grievant, may present the grievance at this Step without the grievant present.

b. Step 2: If the grievance is not settled, the employee, with or without his/her Union representative, shall submit a signed, written grievance to the appropriate Administrator or Office Chief within seven (7) days following the supervisor's oral response. This specific Step 2 grievance shall be the sole and exclusive basis for all subsequent steps. The grievance at this and at every further step shall contain:

(1) A statement of the specific provision(s) of the Agreement alleged to be violated;

(2) The date(s) on which the alleged violation occurred;

(3) A brief description of how the alleged violation occurred;

(4) The specific remedy or adjustment sought;

(5) Authorization by the employee if a Union representative is desired; and,

(6) The signature of the aggrieved employee and the Union representative, if applicable, according to the category of the grievance.

ARTICLE 10

GRIEVANCE PROCEDURE

Section 1: - Purpose and Definition:

The purpose of this grievance procedure is to establish an effective procedure for the fair, expeditious and orderly adjustment of grievances. Only an allegation that there has been a violation, misapplication or misinterpretation of the terms of this Agreement or of the applicable Compensation Agreement or disciplinary actions taken (corrective or adverse actions) shall constitute a grievance under the provisions of this grievance procedure. Any other employee appeals or complaints shall be handled exclusively by the appropriate administrative agency.

Section 2: - Categories:

a. Personal: An individual's grievance. In the case of a grievant proceeding without Union representation, the Union must be given the opportunity to offer it's view at any meeting held to adjust the grievance.

b. Group: A grievance involving a number of employees in any subdivision of the Service components: Detention, Correctional, Community, Health, Administrative or Educational. A group grievance must contain all the information specified in Step 2 (Section 3) of the grievance procedure. This kind of grievance may be filed at whatever step resolution is possible.

c. Class: A grievance involving all the employees in the unit. It must be filed and signed by the Union's Principal Executive Officer or designee at Step 4 of the grievance procedure. Grievances so filed will be processed only if the issue raised is common to all unit employees. A class grievance must contain all information specified in Step 2 (Section 3) of the grievance procedure. The Director, or his designee, shall respond in writing within twenty-one (21) days of receipt of the grievance.

c. Should the grievance not contain the required information, the grievant shall be so notified and given five (5) days from receipt of notification to resubmit the grievance. Failure to resubmit the grievance within the five (5) day period shall void the grievance.

d. The Administrator or Office Chief shall respond to the employee in writing within seven (7) days of receipt.

e. Step 3: If the grievance remains unsettled, the employee shall submit the grievance to the appropriate Assistant Director within five (5) days following the employee's receipt of the response of an Administrator or Office Chief. The Assistant Director must respond in writing within seven (7) days of receipt.

f. Step 4: If the grievance remains unsettled, the employee shall submit it to the Director within five (5) days following the receipt of the response of an Assistant director. Within twenty-one (21) days of receipt the Director will respond in writing to the grievant.

g. Step 5: If the grievance remains unresolved, the Union, within fifteen (15) days after receipt of the Director's response shall notify the Director and the D.C. Office of Labor Relations and Collective Bargaining (OLRCB) in writing whether the Union intends to request arbitration or request that the Department agree to utilize the Grievance Mediation procedure described below on behalf of the employee(s).

Section 4: - Grievance Mediation:

a. The purpose of this Grievance Mediation procedure is to provide on an experimental basis, an innovative method by which the parties may mutually reach satisfactory solutions to grievances prior to the invocation of arbitration. The parties recognize the necessity of carefully considering the circumstances of the particular grievance in deciding whether to utilize this procedure. This experimentation, while broadening the channels of grievance resolution, must comply with District of Columbia laws, rules and regulations and the negotiated

grievance procedure and shall only be invoked upon mutual agreement of the parties in writing on a case-by-case basis.

b. - Selection:

(1) Should the parties fail to resolve the grievance utilizing the grievance procedure set forth above (Section 3), the parties may, within ten (10) days after the Union's request for Grievance Mediation pursuant to Step 5 of the grievance procedure, mutually agree to utilize the Mediation process as set forth below.

(2) A joint request shall be submitted to the Federal Mediation and Conciliation Service that Grievance Mediation services be provided. The mediator selected must have demonstrated expertise in public sector labor relations and in Grievance Mediation/Arbitration.

c. -Mediation Procedures:

(1) Each party shall have representation at the mediation session.

(2) The grievant(s) shall be present at the mediation session. In the case of a class or group grievance, a maximum of three (3) grievants shall be present as representatives of the class or group.

(3) The parties shall submit, respectively, a written statement of their positions to the mediator. Oral arguments shall be presented, however, briefs shall not be submitted.

(4) Mediation sessions shall be informal; the rules of evidence shall not apply.

(5) No record of the session shall be made.

(6) During the session, the mediator may meet individually or jointly with participants, however, he/she is not authorized to compel or impose settlement.

(7) The mediation session shall not exceed one (1) day unless the parties agree otherwise.

d. -Mediation Conclusion:

(1) Within ten (10) days of the mediation proceeding's termination, the mediator shall render a signed settlement agreement if the parties so settled.

(2) The parties shall sign their respective copies of the settlement agreement and return them to the mediator within five (5) days of its receipt.

(3) Should both parties accept the advisory opinion and/or a settlement, it shall not have precedent setting value unless mutually agreed to on a case-by-case basis.

(4) Should an agreement not be reached by the conclusion of the session, the mediator shall immediately provide an oral advisory opinion which the parties may consider in negotiating an agreement themselves.

(5) Should mediation and any further negotiations among the parties fail to resolve the matter, the arbitration proceedings in accordance with Section 3 may be invoked by the Union within five (5) calendar days of the termination of the Mediation session.

(6) The mediator shall be barred from arbitrating the grievance in a subsequent arbitration proceeding or testifying in a subsequent arbitration proceeding.

(7) Documentation pertaining solely to the Mediation Process including evidence, settlement offers or

the mediator's advisory opinion shall be inadmissible as evidence in any arbitration proceeding.

(8) The fees and expenses of the mediator shall be shared equally by the parties.

Section 5: - Arbitration

a. The parties agree that arbitration is the method of resolving grievances which have not been satisfactorily resolved pursuant to the Grievance Procedure or Grievance Mediation.

b. If both parties agree, disputes of arbitrability shall be heard in a separate hearing prior to a hearing on the merits. When the demand for arbitration is received by the Department and the OLRCB, if management asserts nonarbitrability, the Union will be notified that management believes that the issue is not arbitrable. If both parties agree to this process, the OLRCB will then request from the Federal Mediation and Conciliation Service (FMCS) a separate panel of five (5) arbitrators who have dates available within three (3) weeks of the date of the request. The panel shall not include any of the arbitrators on the list for arbitration on the merits, per Section 5.d. The parties shall select an arbitrator from this panel to hear only the arbitrability issue. The hearing on the arbitrability issue shall take place within three (3) weeks after the request for a panel and before a hearing on the merits. The hearing on the arbitrability issued shall be concluded in one (1) day and the arbitrator shall render an oral decision at the conclusion of the hearing. The cost of this arbitration proceeding shall be shared equally between the parties.

c. If the parties proceed beyond Section 5.. (arbitrability) above, and the parties fail to agree on a joint stipulation of the issue(s), each party shall submit a separate statement of the issue(s), to be determined in arbitration pursuant to the voluntary labor arbitration rule of the Federal Mediation and Conciliation Service (FMCS).

d. Within ten (10) days after the Director and the D.C. Office of Labor Relations and Collective Bargaining have received the request for arbitration, the Union shall request the FMCS to refer a panel of seven (7) impartial arbitrators. Upon receipt of the FMCS panel the parties will select one (1) of the arbitrators. If the parties cannot agree to one (1) of the names on the list, each party will alternately strike a name from the panel until one (1) remains. If, before the selection begins, none of the arbitrators are acceptable, a new panel shall be sought.

Section 6:

a. The arbitrator shall hear and decide only one (1) grievance appeal in each case unless substantially similar issues are involved. In such circumstances cases shall be consolidated for arbitration upon agreement of the parties.

b. The hearing shall not be open to the public or persons not immediately involved unless all parties agree to such. All parties shall have the right, at their own expense, to legal and/or stenographic assistance at this hearing.

c. The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision on the issue(s) presented and shall confine his/her decision solely to the precise issues(s) submitted for arbitration.

d. The arbitrator shall render his decision in writing, setting forth his/her opinion and conclusions on the issues submitted within thirty (30) days after the conclusion of the hearing or, within thirty (30) days after the arbitrator receives the parties briefs, if any, whichever is later. The decision of the arbitrator shall be binding upon both parties and all employees during the life of this Agreement.

e. A statement of the arbitrator's fee and expenses shall accompany the award. The fee and the expenses of the arbitrator shall be shared equally by the parties.

f. Appeals of the arbitration awards shall be made in accordance with District of Columbia law (D.C. Code Section 1-605.2(6) which grants the parties the right to appeal arbitration awards to the Public Employee Relations Board or D.C. Superior Court under the Uniform Arbitration Act, whichever applicable.

Section 7: - General

a. No matter shall be entertained as a grievance unless raised within ten (10) days of the occurrence of the event giving rise to the grievance, or within ten (10) days of the employee's knowledge of the occurrence of the event giving rise to the grievance.

b. Any unsettled grievance not advanced to the next step by the employee or, in the event of a class or group grievance, the Union representative, within the time limit specified in the step, shall by deemed abandoned. If the Department does not respond within the time limit specified at each step, the employee may invoke the next step treating the lack of response as a denial of the grievance.

c. All time limits must be strictly observed unless the parties mutually agree too extend said time limits. "Days" means calendar days.

d. No recording device shall be utilized during any step of this procedure unless by direction of the arbitrator for his/her use. No person shall be present at any step for the purpose of recording the discussion.

e. The presentation and discussion of grievances shall be conducted at a time and place which will afford a fair and resonalble opportunity for both parties and their witnesses to attend. Such witness(es) shall be present only for the time necessary for them to present evidence. When discussions and hearings required under this procedure are held during the work hours of the participants, they shall be excused with pay for that purpose. An employee scheduled to work shift-work or weekends will have his/her hours changed to coincide with the time of the hearing.

f. The settlement of a grievance prior to arbitration shall not constitute a precedent in the settlement of grievances.

g. In appropriate circumstances, management may utilize the grievance/arbitration procedure by first filing a grievance with the Principal Executive Officer of the Union. Such filing and response shall be under the same time limits as a Step 4 grievance.

ARTICLE 11

DISCIPLINE (Corrective/Adverse Actions)

Section 1: Both parties recognize the exclusive rights of Management to discipline employees for just cause. However, in order to assure that discipline and discharge cases are handled in an expeditious manner, decisions in such cases will be appealed exclusively under the provisions of Article 10 of this Agreement and as stipulated below.

Section 2:

a. Disciplinary actions may be grieved only at the next higher level than where the level of the final action was taken, except in the case of actions taken by the Director.

b. Should the employee or union (in the case of appeals to arbitration) wish to grieve a disciplinary action, such grievance/arbitration must be filed within the time limits specified in the grievance procedure starting with the date after the effective date of the action.

Section 3: Employees will be reprimanded by supervisors in a manner that will not embarrass them before other employees or the public.

Section 4: Employees requested to reply to disciplinary actions will be informed of the right to have a Union representative present.

Section 5: If an employee can reasonably expect discipline to result from an investigatory interview, an reasonable advance notification of the interview has not been given, at the request of the employee questioning shall be delayed for no longer than twenty-four (24) hours in order to give the employee an opportunity to consult with a Union representative. An employee's Union representative may be present all investigatory questioning sessions held under this Article, but may not answer questions on behalf of the employee. However, the representative may counsel the employee and may assist the employee in presenting the facts.

Section 6: Discipline and discharge will remain in effect until, and unless, changed by an action resulting from a review.

Section 7: Discharge of probationary and temporary employees shall be governed by applicable district regulations.

ARTICLE 12

LEAVE

Section 1: Annual Leave:

a. The Department agrees to provide employee in the unit an opportunity to use all of the annual leave earned in accordance with Department leave policies. Denial of use of leave will be based upon factors which are reasonable, equitable and non-discriminatory. Approval of an employee's request to take annual leave will be granted provided the employee's service can be spared. All annual leave requests must be submitted in advance of the time requested, in accordance with schedules established by supervisors. Failure to obtain advance approval for leave may result in having the absence charged to absence without leave (AWOL). Emergency annual leave may be approved by the designated supervisor when an oral request is made. If granted, the employee must submit a written Application for Leave (SF-71) within twenty-four (24) hours of return to duty.

b. Only supervisors designated by the Department will authorize annual leave. In the absence of the designated supervisor, emergency annual leave will be approved by the next higher level of supervision.

c. All employees requesting a leave period of one (1) week or more will do so in accordance with the following:

1. Their request will be submitted by October 30 each year.

2. Supervisors will notify each employee of the disposition of his/her request by November 30.

3. If more employees from the same work section or area than can be spared apply for leave for the same period, the employee with the greatest service with the Department will have preference except as provided in 6. below. The employee(s) required to make a new selection will have preference over employees who did not submit requests in October if the new selection is resubmitted by December 15.

4. Employees wishing to change their request may do so provided their service can be spared and their new choice does not conflict with leave scheduled for another employee. Since these dates are tentative, the employee will request from his/her supervisor the proposed leave period he/she desires to change as far in advance as possible.

5. During the period May 1 to October 1, no employee will be granted more than one (1) leave period until every employee in the work area has had an opportunity to take a leave period during these months.

6. The granting of leave for the days of Thanksgiving, Christmas and New Year holidays will be on a rotating basis so that all employees may have an equal opportunity for leave at these times.

7. Although ever effort will be made by supervisors to honor advance requests for leave periods, an advance request is not a guarantee of final approval. The Employer reserves the right to cancel leave previously approved for circumstances such as workload and unforseen urgent needs. In the event it is necessary to cancel advance requests, the supervisor will promptly advise the employee concerned. In such cases the employee's circumstances will be given due consideration. Every

effort will be made to reschedule the leave period for the employee's convenience.

c. If an employee is transferred within the Department at his/her request or as a result of a promotion, training assignment, or voluntary shift change other than the normal shift rotation, the employee may be required to adjust his/her leave to the leave schedule in the unit to which he/she has been transferred. If the move has been as a result of a management decision, seniority will be the controlling factor.

d. In the event of a death in the immediate family (parent, sister, brother, spouse, child, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law) of an employee, he/she shall be granted annual leave for a maximum of three (3) successive work days upon request.

Section 21 - Sick Leave:

a. Supervisors may approve sick leave of employees who are unable to perform their duties due to illness. Employees assigned to rotating shifts or regular tours of duty shall request sick leave from the control center one (1) hour before the start of their scheduled shift for each absence. All other employees shall request sick leave as soon as possible prior to the start of their regular shift on the first day of absence and for each subsequent day but not later than one (1) hour after the beginning of each shift.

b. A sick leave request is not an entitlement to sick leave. Upon a reasonable suspicion of abuse or for absences of three (3) days or more a supervisor may require the employee to submit a doctor's certificate or submit to a fitness for duty examination.

c. Sick leave will be requested in advance for visits to, and/or appointments with doctors, dentists, practitioners, opticians, chiropractors and for the purpose of securing diagnostic examination, treatment and x-rays.

Section 3: - Advanced Sick Leave:

Advanced sick leave may be granted at the discretion of the supervisor in accordance with applicable District Personnel regulations.

Section 4: - Leave Without Pay:

Leave Without Pay (LWOP) may be granted at the discretion of the supervisor in accordance with applicable District Personnel regulations.

Section 5: - Maternity Leave

a. Any employee (male or female) may be granted any combination of annual leave or leave without pay in accordance with this Article for a period of up to one (1) year because of pregnancy, childbirth or related medical conditions.

b. A female employee may use sick leave to cover the time required for physical examinations and to cover any period of incapacitation due to pregnancy.

c. No employee shall be required to take maternity leave unless and until her doctor states that she is disabled from work. No employee shall be refused return from maternity leave at any time she reports for work upon advise of her doctor that she is physically capable to perform her job.

ARTICLE 13

TRAINING

Section 1: Consistent with the availability of funds, the Employer agrees to provide whatever training necessary to develop the skills, knowledge and abilities that will best qualify employees for the performance of official duties that can help significantly to increase efficiency and effectiveness of operations of the Department. This includes training for employees whose jobs have been substantially altered through no fault of the employees.

Section 2: The Employer agrees that official time (not to include travel time or per diem) may be granted to a Union representative to attend labor-management training which is of mutual concern to the Employer and the Union.

Section 3: Normally, training which is authorized and approved by the Employer will be conducted during regular working hours (8:00a.m.-4:30p.m.) whenever practicable. This does not apply to reading assignments given as part of training nor does this Article or any aspect of this Agreement preclude an employee from participating in training on his/her time if so desired.

Section 4: A record of an employee's training and details to other than regular assignments will be documented and placed in the individual's Official Personnel Folder to be used as reference for qualification for job openings.

Section 5: The Department shall provide appropriate correctional training to all personnel commensurate with their inmate contact upon (prior to) their entrance on duty. Periodic in-service training shall be provided so that all correctional officers who have completed their probationary period are enrolled for forty (40) hours per week. Employees who are not correctional officers who work in an institutional setting and who have completed their probationary period shall be enrolled in-service training for eight (8) hours per year. The scheduled in-service training may be temporarily suspended or modified only by the Director or Deputy Director, due to unforeseen circumstances.

Section 6: Opportunities for employee development through outside educational programs which are related to performance of official duties will be made available in accordance with Title 13 of the Comprehensive Merit Personnel Act.

Section 7: The department will attempt to provide an orientation for employees who are expected to drive ambulances. This orientation will include an explanation of the mechanical operation of the ambulance and anything else the Department deems necessary.

ARTICLE 14

HEALTH

Section 1:

a. An employee who becomes ill or injured in the performance of his/her job shall be instructed as to the benefits under Title XXIII of the Comprehensive Merit Personnel Act.

b. The Supervisor will expedite the process of necessary paperwork dealing with compensable injuries at his/her level.

c. An employee who is injured on the job and as a result will be disabled from work shall provide his or her Supervisor, within seven (7) days of the injury, with written certification by a licensed physician verifying the medical diagnosis and the specific physical limitations resulting from the injury. The employee shall provide, at the written request of the supervisor, weekly certification by a licensed physician verifying the medical diagnosis and explaining why the employee continues to be disabled from work. The supervisor shall not require the employee to provide weekly certification if the initial certification or a subsequent certification, in addition to the information described above, states that the employee will be disabled from performing his/her duties for a specific period of time in excess of one (1) week. An employee shall not be required to provide any subsequent medical certification if the original certification, in addition to the medical diagnosis and specification of physical limitations, states that the physical limitations will continue for a minimum of 45 days. Although it is expected that the employee will normally be able to provide medical certification, if the treating physician refuses to provide the employee with the required documentation, the employee shall give a written authorization to the physician, and a copy of the release to the supervisor, authorizing the physician to provide all medical data requested by the supervisor or other management official regarding the employee's injury.

Section 2: The medical records of an employee will be maintained confidentially under the control of a medical staff employee. When requested by the employee, his/her full medical record will be made available to a licensed physician designated by the employee.

Section 3: The Employer agrees to provide:

a. Emergency diagnosis and first-aid treatment of injury or illness during working hours and that are within the competence of the professional staff and facilities of the health services unit.

b. Such in-service examinations as the Department determines necessary.

c. Administration, at the discretion of the health service unit physician, of treatment and medications furnished by the employee and prescribed in writing by his personal physician.

d. Preventive services within the competence of the professional staff, e.g., appraise work environment, health hazards, health education program and specific disease screening examinations.

e. Assistance for an employee recuperating from an illness or injury and temporarily unable to perform their assigned duties. The employee must submit a doctor's certificate to the supervisor with his/her request for a temporary assignment to limited duty. The Employer may require that such request be reviewed by the Chief Medical Officer who will make a report to the Employer with appropriate recommendations. Employees who suffer verified temporary on-the-job illness or injury shall be temporarily assigned to available limited duty during their period of incapacitation. The Employer may require an employee on limited duty assignment to submit to a fitness-for-duty examination to determine his/her status for full duty. If needed, consideration should be given to restructuring an existing job incorporating only those duties in the new job that the employee can handle physically.

Section 4: The Department agrees that:

a. The Health Services and the Human Resources Development Center shall include in its health program, educational information and training on the issue of AIDS in the work place.

b. Employees required to perform body searches shall be provided surgical gloves.

Section 5: The Employer agrees to provide relief to correctional staff within a reasonable period of time for employees in areas where toilet facilities are not easily accessible.

ARTICLE 15

SAFETY

Section 1: The Department will continue to make every reasonable effort to provide and maintain safe working conditions. The Union will cooperate in these efforts and encourage employees to work in a safe manner and promptly report to the supervisor all accidents.

Section 2: In the course of performing their normally assigned work, employees will be alert to observe unsafe practices; equipment and conditions as well as environmental conditions which represent industrial health hazards and shall immediately report any of the above to their supervisor.

Section 3: If competent technical authority such as the Department's Medical Officer, the Security Officer, the Environmental Health Inspector, the Chief Engineer, the Safety Officer or the Industrial Hygienist has determined that working conditions within a particular unit are unduly hazardous to the employee's health or safety, then an employee will not be required to work within that specific area until the conditions have been removed,or remedied.

Section 4: The Department agrees that an employee will not be required to operate equipment that he/she is not qualified to operate.

Section 5: The Department agrees to furnish appropriate protective clothing and equipment necessary for the performance of assigned

work. The Union may, at its discretion, recommend new protective clothing and equipment and modifications to existing equipment for consideration by the Department.

Section 6: Ambulance service to injured employees will be available on all shifts.

Section 7: The Union and the Department will make every effort to prevent accidents of any kind. Should accidents occur, however, a prime consideration will be the welfare of injured employees.

Section 8: An extra copy of Form CA-1 will be prepared. The Safety Officer will forward one (1) copy of the CA-1 to the Union representative on the Safety Committee.

Section 9: The Department agrees that the Union shall have two (2) members, one correctional and one non-correctional, on the Department Safety Committee. These meeting will be held during working hours without loss of pay or leave to employees.

Section 10: No employee will be required to operate any vehicle which has clearly recognized brake, steering, frontend, tire wear, flooring or exhaust system deficiencies as determined by a mandatory monthly preventive maintenance check which shall include the above mentioned items.

Section 11: The Union may make recommendations to the facility Administrator and the Director regarding the detection methods used to prevent the introduction of contraband into the facilities.

Section 12: The Department shall select a single type of bunk tag to be used within each institution or facility and shall ensure that an adequate supply of the designated type is available, except in unusual or unforeseen circumstances.

Section 13: The Employer will make reasonable efforts to ensure that inmates do not have access to employees' personnel files or to any documents pertaining to employee discipline or counseling.

ARTICLE 16

REDUCTION-IN-FORCE

Section 1: The Employer agrees to notify the Union of all proposed

EXHIBIT B

Memorandum of Understanding between District of Columbia Department of Corrections and FOP/DOC Labor Committee, dated December 20, 1994.

Government of the District of Columbia
DEPARTMENT OF CORRECTIONS
Suite N-116
1923 Vermont Avenue, N.W.
Washington, D.C. 20001

Please file

Office of Special Projects

FACSIMILE MAIL COVER SHEET
FACSIMILE TELEPHONE NUMBER (202) 673-6690

DATE: 12/20/94

TO : E. Bargainer

FROM : Mark Levitt

SUBJECT : Memo of Understanding

COMMENTS: _____

Numbers of pages 2 (including transmittal sheet)

For transmission problems, please call (202) 673-2333

MEMORANDUM OF UNDERSTANDING

This is to memorialize the Parties' agreement regarding the working conditions Collective Bargaining Agreement entered into between the International Brotherhood of Teamsters and the D.C. Department of Corrections, signed on May 23, 1986.

The Agreement has been adopted by the Parties' and has been in operation since the Public Employee Relations Board certification of the Fraternal Order of Police, Department of Corrections Labor Committee on January 13, 1994. It will continue in full force and effect until such time as the Parties renegotiate it pursuant to the provisions of the Comprehensive Merit Personnel Act and the applicable provisions of the Agreement.

For the FOP/DOC Labor Committee

For the D.C. Department of Corrections

EXHIBIT B

Memorandum of Understanding between District of Columbia Department of Corrections and FOP/DOC Labor Committee, dated December 20, 1994.

EXHIBIT C

Investigative report of findings of the National Institute of Occupational Safety and Health (NIOSH) dated September 25, 2000.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

September 25, 2000
HETA 2000-0376

William H. Dupree
Chairman
Fraternal Order of Police
Department of Corrections Labor Committee
400 5th Street, NW
Washington, D.C. 20001

Dear Mr. Dupree:

This report summarizes the findings and recommendations from the National Institute for Occupational Safety and Health (NIOSH) Health Hazard Evaluation (HHE) conducted at the District of Columbia Detention Center (D.C. Jail) on August 28-29, 2000.

Introduction

An HHE request was received by NIOSH on July 28, 2000, from the Fraternal Order of Police (FOP) concerning a case of Legionnaires' disease in a correctional officer working in the receiving and discharge (R&D) area of the D.C. Jail. The general indoor environmental quality (IEQ) of the jail was also of concern. On August 28th, NIOSH investigators, Angela Weber (Industrial Hygienist), and Dr. Mitchell Singal (Medical Officer), held an opening conference with management and employee representatives to discuss this request and the scope of the NIOSH survey. Following the meeting, a walk-through of the building was conducted which included the male and female R&D areas, three cell blocks, and two cooling towers located on the roof of the building. Potential sources of *Legionellae pneumophila* and exposure pathways were investigated.

Facility Description

Approximately 450 correctional officers work at the 400,000 square-foot jail which has been in operation since 1976. Capacity at the D.C. Jail is limited to 1,674 detainees. The environmental investigation focused on the male and female R&D areas and three cellblocks. The R&D area and the cellblocks are located in separate parts of the facility and are served by different heating, ventilating, and air-conditioning (HVAC) systems. Showers are used in all 18 cellblocks and in

the R&D areas. There were two cooling towers located on the roof of the jail. Originally, the building operated with only one cooling tower with the additional tower added in June 2000. Two new chillers were recently added to improve the cooling capacity of the HVAC systems.

Air handling units are single-duct, constant volume systems which supply air to the occupied spaces via internally-lined central ductwork. Unconditioned outdoor air enters the rooftop unit serving the R&D area through a set of dampers where it is mixed with return air from the occupied spaces. Dampers are manually operated and do not have a minimum damper setting. Supply air passes through a bank of filters having a rated efficiency of 10 percent. Filter material from a roll filter is cut to fit inside the frames. Air passes through a cooling coil, a supply fan, and supply air ductwork, and then delivered to the occupied spaces through slot diffusers. Air from the occupied spaces enters the common return air plenum above the dropped ceiling through grilles and is returned to the rooftop air handling unit. Air is exhausted from the building through restroom and shower exhaust systems which operate on a continuous basis.

In response to concerns regarding potential exposures to *Legionella* in the R&D area, the D.C. Jail changed all shower heads in the R&D area during the first week of August as a precautionary measure. A new shower room exhaust fan was also installed. The maintenance staff has reportedly increased the amount of air supplied to the male R&D area to approximately 1,000 cubic feet per minute (cfm).

Previous Investigations

Prior to the NIOSH HHE, investigations had been conducted at the D.C. Jail by both the D.C. Department of Health (DOH) and D.C. Office of Occupational Safety and Health (OSH). Prior to any concerns at the jail regarding exposures to *Legionella*, an IEQ complaint from the R&D area was investigated by D.C. OSH approximately a year ago on July 9, 1999. This investigation revealed that the shower exhaust fan was broken in the R&D area, resulting in "an extremely hot and humid" work environment. In addition, the HVAC system was found to be functioning at less than optimal conditions. D.C. OSH recommended that the exhaust fan be repaired as soon as possible, that appropriate ventilation guidelines should be met, and that a preventive maintenance plan for the HVAC system be implemented. A routine D.C. DOH investigation conducted in March 2000 found the same problems in the R&D area. In addition, poor ventilation and lack of air-conditioning was identified as a problem throughout the cellblocks and cellblock bubbles (enclosed correctional officer stations). In some cases, the temperature of the air supplied to the cellblock bubbles exceeded 100°F. The D.C. DOH also found that the jail still lacked a preventive maintenance plan for the HVAC systems. The DOH also noted that hot water temperatures for the cellblock showers were consistently below 105°F (at which temperatures Legionella growth can occur).

After a R&D employee was diagnosed with Legionnaires' disease, a meeting and an inspection of the facility was conducted at the D.C. Jail on July 25, 2000, by representatives from the D.C.

DOH, D.C. OSH, and the D.C. Department of Corrections. On July 26, 2000, DC. OSH collected water samples from five areas (two female shower heads, two male shower heads, and an exhaust grille) for culture of *Legionella*. None of the samples grew *Legionella*. Although a source of *Legionella* was not identified by D.C. DOH or D.C. OSH, both agencies concluded that the R&D area was poorly ventilated, and the temperature of the shower water was conducive for the growth of *Legionella*. Similar concerns were described by these agencies for the showers located in the cellblocks. Recommendations included taking immediate corrective action to repair and improve the ventilation in the R&D area, implementing a preventive maintenance program for the ventilation system, and maintaining servicing reports for the chemical treatment of the cooling towers.

D.C. DOH reviewed medical records of inmate pneumonia cases from May through July and did not identify any cases of Legionnaires' disease. Nor were any cases of Legionnaires' disease reported from elsewhere in the city during that time. The DOH recommended that all current and new cases of pneumonia without laboratory-confirmed etiology be tested for *Legionella*-antigen in urine and the *Legionella* organism by culture. The agency is requiring that all current and new pneumonia cases among inmates be reported to the DOH until September 30, 2000.

NIOSH INVESTIGATION

NIOSH is an agency in the Centers for Disease Control and Prevention (CDC) that conducts research to assess occupational health and illnesses. Therefore, our investigation focused on the D.C. Jail employees. When sporadic legionellosis occurs, it is usually not possible to determine the source of infection. This is because *Legionella* colonizes many water supplies, often without being associated with transmission of disease. Since the workplace is one possible source of infection, it is important to determine if a hazard exists for other employees when Legionnaires' disease is diagnosed in an employee.

Please refer to Appendix A for evaluation criteria used during the NIOSH HHE concerning the investigation of Legionnaires' disease and IEQ complaints.

Medical

The D.C. Jail has a contract medical service for inmates that is available to employees only for the evaluation of acute work-related injuries. Another city agency provided employees with tuberculosis (TB) skin testing in 1998, and hepatitis B immunization in 1997. For evaluation and treatment of illnesses (work-related or not), as well as for ongoing preventive occupational health services, employees must use their own physicians or other outside resources. An employee who takes three or more consecutive days of sick leave must provide medical documentation. The D.C. Jail maintains no other employee health records.

We reviewed daily status reports from June, July, and August, 2000. Reports for occasional 1- or

2-day periods were missing for each shift, as well as the reports for the period July 15-August 14 for the first shift. Among the 32 employees in the R&D area (according to a staffing list of July 26, and excluding the employee who had Legionnaires' disease), we identified 11 employees with at least three consecutive days of sick leave. Three occurred in June, one mid-month (about the same time as the Legionnaires' case) and two late in the month. Four occurred in July, two early in the month and two mid-month. Five occurred in August, three early in the month and two mid-month. The medical certificates were not provided but reportedly do not contain sufficient information to determine if any of the illnesses were respiratory diseases, much less pneumonia.

The temporal pattern of sick leave requiring medical certification does not suggest an outbreak of Legionnaires' disease among correctional officers in mid-June. It does not, however, exclude the possibility of other cases. Although Legionnaires' disease can be a severe illness, it can also be mild enough that it might not result in absence from work for three days. Also, the medical certification requirement would not apply to illnesses of three or four days if only one or two of those days fall on scheduled work days.

Environmental

Many natural and man-made water systems serve as amplifiers of *Legionella* by providing suitable conditions for growth. These include cooling towers, evaporative condensers, whirlpools, grocery store misters, humidifiers, potable water heaters and holding tanks, pipes containing stagnant warm water, shower heads, faucet aerators, and nebulizers.[1,2,3,4,5] Out of these potential aerosol-producing sources, cooling towers and showers were identified in the D.C. Jail.

We measured water temperature of the showers located in the male and female R&D areas and cellblock SW-3. Shower water temperatures (four in male R&D, two in female R&D, and two in SW-3) fell between the ranged of 20°C - 45°C (68°F - 113°F) which is the optimum temperature range for *Legionella* growth. According to maintenance staff, to prevent scalding, the maximum temperature the water can reach downstream of the mixing valve is 105°F. The showers in the cellblocks are used intermittently throughout the day, while the showers in R&D are used primarily during the late afternoon. All incoming inmates are showered in R&D prior to admission. According to correctional officers working in this area, approximately 70 - 90 inmates are processed per day. During this time period (two to three hours), five correctional officers work near the showers. Although the environmental source for *Legionella* was never identified for the correctional officer who contracted Legionnaires' disease, this employee worked in R&D during the second (afternoon) shift.

It is estimated that *Legionella* can be cultured in up to 40% of all cooling towers.[6] In order to minimize the entrainment of cooling tower mist, outdoor air intakes should be located at least 25 feet (preferably 50 feet) upwind of and horizontally separated from cooling towers.[1] The old cooling tower was found to be located parallel to and within 15 feet of the outdoor air intake of

reduction-in-force actions which may affect unit employees. The Employer will consult the Union concerning any proposals to minimize the number of affected employees.

Section 2: In the event of a RIF, procedures in the District's personnel regulations, in accordance with appropriate provisions of the Comprehensive Merit Personnel Act, shall be utilized.

ARTICLE 17

UNIFORMS

Section 1: The Employer shall provide the following items of uniforms to unit employees as specified:

a. Correctional Officer, Male:

Blouse, blue	2 each
Overcoat, blue	1 each
Trousers, blue (winter)	3 pairs
Trousers, blue (summer)	3 pairs
Frame, cap, winter (opt.)	1 each
Frame, cap, summer (opt.)	1 each
Shirt, gray, short sleeve	6 each
Shirt, gray, long sleeve	6 each
Necktie, black	1 each
Whistle, chrome	1 each
Raincoat	1 each
Badge, large, silver	1 each
Badge, small, silver	1 each

b. Correctional Officer, female:

Badge, large, silver	1 each
Badge, small, silver	1 each
Frame, cap, winter (opt.)	1 each
Frame, cap, summer (opt.)	1 each
Blouse, blue	2 each
Overcoat, blue	1 each
Trousers, blue (summer)	3 pairs
Trousers, blue (winter)	3 pairs
Shirt, gray, long sleeve	6 each
Shirt, gray, short sleeve	6 each

Necktie, black	1 each
Whistle, chrome	1 each
Raincoat	1 each

If a Correctional Officer is pregnant and on active duty, the Employer shall make available suitable uniform clothing upon the employee's request.

c. Khaki Uniforms: (Wage employees and other employees assigned to jobs requiring these uniforms)

Trousers, Khaki	6 pairs
Shirt, Khaki, long sleeve	6 each
Shirt, Khaki, short sleeve	3 each
Raincoat	1 each
Coveralls, Khaki	2 pairs
Shoes, Safety, steel toe	1 pair

d. Food Service Stewards:

Trousers, blue (summer)	2 pairs
Trousers, blue (winter)	2 pairs
Blouse, blue	2 each
Overcoat, blue	1 each
Shirt, white, long sleeve	6 each
Shirt, white, short sleeve	6 each
Necktie, black	1 each
Whistle, brass	1 each
Raincoat	1 each
Frame, cap, winter	1 each
Frame, cap, summer	1 each
Badge, large, gold	1 each
Badge, small, gold	1 each

Section 2: Cleaning and maintenance are the responsibility of each employee. However, the laundry facility at Lorton (Central Facility) shall be made available for issued washable items.

Section 3: Issued uniforms will be worn by employees only in the course of their job duties and traveling to and from work. Unserviceable clothing will be replaced by the Employer as soon as available provided that the damage was not due to neglect by the employee and when such items are damaged through fair wear and tear and in the performance of their duties.

Section 4: Types and styles of uniforms are subject to Management discretion.

Section 5: The uniform warehouse shall be open Monday through Friday from 7:00 a.m. to 3:30 p.m. except for breaktime. The Union agrees that Management shall change hours of work of the employee who operates such warehouse to accommodate this schedule.

Section 6: Key Keepers shall be issued to all employees issued keys.

Section 7: Flashlights shall be made available at appropriate locations as determined by Management.

ARTICLE 18

DETAILS, TEMPORARY PROMOTIONS AND PAY IN A HIGHER-GRADED POSITION

Section 1: Details or temporary promotions shall be made in accordance with appropriate provisions of the District Personnel Regulations.

Section 2: - Acting Pay:

An employee detailed or assigned to a higher-graded position for more than ninety (90) consecutive days shall receive the higher rate of pay beginning the first full pay period following the ninety (90) day period. If Management decides to reassign an employee to a higher-graded position after the employee returns from approved leave or disability compensation, such absences will not be considered a break in the consecutive day requirement.

Section 3: Management shall take measures to insure that an employee assigned or detailed to a higher-graded position is not arbitrarily removed from the detail and then reinstated to the detail in order to avoid Acting Pay in accordance with Section 2 above.

Section 4: Details or assignments to a higher-graded position shall not be used as a pre-selection device. For purposes of the preceding, the term "pre-selection device" refers to a recurring pattern of selection of individuals for promotions that are not the most highly qualified and were assigned/detailed to the higher-

graded position as provided under this Article.

ARTICLE 19

DISTRIBUTION OF OVERTIME AND TOUR OF DUTY

Section 1: Where specific personnel demands are not necessary and where the operational mission allows, overtime assignments will be offered to qualified, voluntary personnel and distributed equitably. A list shall be posted for employees to sign up for voluntary overtime.

Section 2: Changes in shift will be distributed and rotated equitably among qualified employees. The Union may consult with the Employer concerning the assignments and changes of shifts. A record of employee changes of shifts and assigned days off shall be maintained by the Employer and can be reviewed by the Union.

ARTICLE 20

MERIT STAFFING/PROMOTION

Section 1: Merit staffing and promotion procedures shall be implemented in accordance with applicable provisions of the DPM as implemented by the established DCOP Merit Staffing Plan and this Article.

Section 2: The Employer will administer the following practices and principles:

a. The Employer will announce all job vacancies for at least ten (10) calendar days. A copy of the vacancy announcement will be provided to the Union's Principal Executive Officer.

b. Based on established qualifications, applications will be evaluated and a list of "Highly Qualified" candidates (if so evaluated) will be referred to the selecting official and, in the absence of a "Highly Qualified" list, the "Well Qualified" list (if so evaluated) will be referred to the selecting official and, in the absence of the "Well Qualified" list the "Qualified" list (if so

evaluated) will be referred to the selecting official.

c. The Employer will notify all applicants of the outcome of their application for the position.

d. Copies of the Department Order describing the procedural aspects of the Merit Staffing/Promotion Program will be made available at each facility to all employees and a copy provided to the Union's Principal Executive Officer.

Section 3: Area of Consideration:

To the extent not in violation of Equal Opportunity laws and regulations and the Department's Affirmative Action Plan, the area of consideration to fill position vacancies in the bargaining unit shall be the Department; provided that the official requesting the personnel action certifies to the Office of Personnel that an adequate number of qualified candidates is expected to result from such limited area of consideration. An adequate number shall be no less than three (3).

Section 4: Outside candidates competing for departmental promotional opportunities must be equally or better qualified than internal applicants before they will be appointed/promoted.

Section 5: The Union will have ex-officio membership as an observer on merit staffing panels for non-supervisory positions within the bargaining unit except for positions in the Director's Office. The Union representative must be the same grade or higher than the position being filled. The Union representative cannot be an employee of the institution for which he/she is serving as a panel member or an applicant for the vacant position. In any instance where possible conflict may exist regarding the Union representative, the Office of personnel will contact the Union's Principal Executive Officer to review the conflict prior to the panel meeting. Such observer must sign a pledge of confidentiality regarding items restricted by the Privacy Act.

Section 6: For non-correctional vacancies, if one eligible candidate who is certified for consideration is interviewed, all such candidates will be interviewed.

Section 7: If the final selecting official passes over the

eligibles sent to him/her, the selector must justify his/her reasons to the Office of Personnel in writing before extension of the recruitment is initiated.

Section 8: No employee can file a grievance for non-selection unless there has been a violation of the stated procedures in the merit promotion plan. Complaints of non-selection due to discrimination are not subject to the negotiated grievance procedure and are exclusively appealable to the appropriate administrative agency handling such complaints.

Section 9: The parties agree that in lieu of utilizing social security numbers, etc. in "breaking ties for certification" as provided in the Merit Staffing Plan (DMP Chapter 8 Appendix A (A.12) that the following shall apply: Seniority in grade will be the first deciding factor, and if still tied, years in the Department will then be the deciding factor.

ARTICLE 21

POSITION DESCRIPTIONS

Section 1: Each employee will be supplied with a copy of his/her official position description by the Office of Personnel upon entry to duty or change in position description. Position descriptions will be furnished to the Union when those position descriptions involve Union interest such as in a current and direct dispute or controversy with department management. Other requests for position descriptions will be made directly to the Director of the office of Personnel.

Section 2: The clause found in job descriptions "performs other duties as assigned" shall be construed to mean the employee may be assigned to other duties which are normally related to regular assignments. However, it is recognized that management decisions reflect the needs of the organization and are not designed to improperly utilize the skills of the employee to take unfair advantage of the employee's employment status. The Employer recognizes that job assignments should be commensurate with position descriptions. The Union recognizes that at times the Employer must deviate from this policy. When such deviation is necessary, the Employer will make every effort to assign employees whose normal duties and pay levels are most nearly associated with the job to be assigned. In all cases, such assignments will be

kept to a minimum and an attempt will be made to meet these needs on a voluntary basis. The Employer further agrees to take into consideration, when making such assignments, the employee's ability to perform, health and age.

Section 3: Position classification appeals are not subject to the negotiated grievance procedure. Such classification appeals shall be processed to the Office of Employee Appeals in accordance with applicable law. Copies of procedures to be followed in filing appeals will be made available to employees and Union representatives upon request to the Office of Personnel.

ARTICLE 22

PERSONNEL FILES

Section 1: An employee shall have the right to view his/her Official Personnel File and, upon request, inspect or copy any document appearing in his/her Official Personnel File, consistent with release of official information as prescribed in the Comprehensive Merit Personnel Act and District regulations.

Section 2: The Employer will assist the employee or his/her representative (designated in writing) to obtain photo-copies of any such documents.

Section 3: The rights of employees pertaining to their Official Personnel Files as stipulated in the above Sections shall be extended to apply to an employee's training and information folder kept by the Department.

ARTICLE 23

TRANSFERS AND INTER-INSTITUTIONAL ROTATION

Section 1: It is recognized that the Employer has the right to transfer or reassign employees whenever the interest of the Department so requires, but transfers or reassignments shall not be used as a form of reprisals.

Section 2: After fifteen (15) years of service with the Department, an employee may request to be reassigned to one of the Department's institutions of his/her choice. Employee's preference

as to the shift and assignment will be taken into consideration and, as staffing needs permit, adhered to.

Section 3: Senior employee's may request a trade with another employee in another institution when a hardship in transportation is involved subject to the approval of the appropriate management officials. An answer on the request will be made within thirty (30) days.

ARTICLE 24

RETIREMENT COUNSELING

The Employer will provide counseling to employees who are of retirement age. This counseling will include information on voluntary deductions, benefits, insurance and assisting employees in preparing all necessary retirement papers.

ARTICLE 25

INCENTIVE AWARDS AND PERSONNEL ENTERPRISES COMMITTEES

Section 1: The Union may designate one (1) voting representative on both the Department's Incentive Awards and Personnel Enterprises Committees.

Section 2: The Employer will provide a five year Department service pin for all employees who attain five (5) years of Departmental service after the effective date of this Agreement.

ARTICLE 26

DISTRIBUTION OF HEALTH BENEFIT BROCHURES

The Employer agrees to make available to all employees upon entrance on duty and during open enrollment season copies of the health benefit plan brochures under the applicable FEHB program.

ARTICLE 27

PERFORMANCE COUNSELING

Section 1: If an employee is to be denied his/her periodic step

increase he/she shall be so notified in advance in writing.

Section 2: Such notification shall include:

a. An explanation of each aspect of performance in which the employee's services fall below a satisfactory level and how this renders his/her performance on the job as a whole, below a satisfactory level; and,

b. A statement of the satisfactory level of performance on each of those work aspects; and,

c. Advice as to what the employee must do to bring his/her performance up to the satisfactory level.

Section 3: Notification as stipulated above shall be made in advance of denial of the periodic step increase and the employee shall be given at least sixty (60) days to bring such performance up to a satisfactory level.

Section 4: The provisions of this article do not apply to disciplinary actions arising out of violations of orders, rules or regulations.

ARTICLE 28

PERFORMANCE RATING

The parties agree that a performance rating plan has not been established as provided in Section 1401 of the Comprehensive Merit Personnel Act. The present system used to evaluate performance will continue in use until such time as the performance rating described in Title XIV of the Act is established after negotiations with the Union(s).

ARTICLE 29

NO STRIKE OR LOCKOUT

Section 1: Under the provisions of D.C. Code Section 1-618.5 it is unlawful to participate in, authorize or ratify a strike.

Section 2: The term "strike" as used herein means a concerted refusal to perform duties or any unauthorized concerted work

stoppage or slowdown.

Section 3: No lockout of employees shall be instituted by the Employer during the term this Agreement in a strike situation except that the Department in a strike situation retains the right to close down any facilities to provide for the safety of employees, property or the public.

Section 4: In the event of a strike as defined by this Article and upon receipt of a written notice from the Employer of any strike, within eight (8) hours the Union shall publicly disavow the action by posting notices and issuing a news release to the media stating that the strike is unauthorized. Notwithstanding the acceptance of the existence of any strike, the Union will use every reasonable effort in cooperation with the Employer to terminate the strike.

Section 5: It is recognized that any employee who participates in or initiates a strike as defined herein may be subject to disciplinary action.

ARTICLE 30

DISTRIBUTION OF AGREEMENT

Section 1: The Employer agrees to have printed 3400 copies of the Agreement and distribute a copy of the Agreement to all unit members within ninety (90) days after it is printed.

Section 2: The Employer shall pay the cost of printing this Agreement up to $3,500 and the Union agrees to pay any additional cost if necessary.

Section 3: The Department agrees to extend to the Union's Principal Executive Officer or Business Representative time available at the initial orientation period for employees to discuss Union activities and the labor-management Agreement governing employee-management relations in the Department.

ARTICLE 31

WASH-UP TIME

Wash-up time of fifteen (15) minutes prior to the end of the shift will be made available to employees in Building Trades.

ARTICLE 32

LIABILITY

Section 1: The Employer shall provide, at its cost, legal representation to any employee who is named as a defendant in a civil action arising out of acts committed by the employee within the scope of his/her employment, provided however, that such representation is requested by the employee no more than five (5) calendar days after the service of process and that such representation would not pose a conflict of interest or potential conflict of interest.

Section 2: Representation will be provided through the Office of the Corporation Counsel. The decision of the Corporation Counsel on whether to represent an employee shall be final. Should the Corporation Counsel decline to represent the employee because of a conflict of interest or potential conflict, the employee may be represented by any private attorney of his/her choice. The Employer will reimburse the employee for reasonable attorney's fees (as determined by the court) incurred in the employee's defense of the action.

Section 3: Neither representation nor attorney fee reimbursement will generally be provided where the employee has been found to have engaged in willful misconduct that has resulted in disciplinary action against him/her as a result of his/her conduct with respect to the matter in question.

ARTICLE 33

SAVINGS CLAUSE

In the event that any provision of this Agreement shall at any time be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Agreement, it being the expressed intention of the parties hereto that all other provisions

not declared invalid shall remain in full force and effect.

ARTICLE 34

DURATION AND FINALITY

Section 1: This Agreement shall remain in full force and effect until September 30, 1987 and shall be extended for three (3) years at the option of either party upon notice to the other party between 120 or 90 days prior to September 30, 1987. However, between 120 and 90 days prior to September 30, 1988, either party may reopen the contract upon demand to the other party. The Agreement will become effective upon the Mayor's approval subject to the provision of Section 1715 of the Act. If disapproved because certain provisions are asserted to be contrary to applicable law, the parties shall meet within thirty (30) days to negotiate a legally constituted replacement provision or the offensive provision shall be deleted.

Section 2: The parties acknowledge that this contract represents the complete Agreement arrived at as a result of negotiations during which both parties had the unlimited right and opportunity to make demands and proposals with respect to any negotiable subject or matter. The Department and the Union agree to waive the right to negotiate with respect to any other subject or matter referred to or covered or not specifically referred to or covered in this Agreement for the duration of this contract unless by mutual consent or as provided in Section 5 of the Article.

Section 3: In the event that a state of civil emergency is declared by the Mayor (civil disorders, natural disasters, etc.) the provisions of this Agreement may be suspended by the mayor during the time of the emergency.

Section 4: All terms and conditions of employment not covered by the terms of this Agreement shall continue to be subject to the Employer's direction and control through applicable D.C. laws, rules and regulations. However, when a change of a Department Order or rule directly impacts on the conditions of employment of unit members, such impact shall be a proper subject of negations upon the request of the Union.

the air handling unit (AHU-1-G-B) responsible for supplying air to the bottom three floors of the jail (which includes the R&D area). A water sample for *Legionella* was collected from this cooling tower by a D.C. Jail consultant on August 17, 2000. The sample yielded no *Legionella*, but the cooling tower had been cleaned prior to sampling. The new cooling tower is located within 25 feet of the outdoor air intake of the air handling unit serving the kitchen area. This cooling tower became operational in the middle of June 2000 (soon after the older cooling tower broke down). According to maintenance staff, the water in the older cooling tower, was drained after the tower had been out of operation for a week. This cooling tower was brought back on-line without being appropriately cleaned according to current recommended guidelines.[7] NIOSH was unable to evaluate effectiveness of the cleaning, maintenance, and chemical treatment of the cooling towers, because the requested records were not provided.

We conducted a limited visual inspection of the HVAC system to characterize the design of the system, to determine the position of the outdoor air intake dampers, and to evaluate the filtration and overall cleanliness of the system. On the day of the site visit, the dampers were shut which means that no outside air was being supplied to the building. According to maintenance staff, this is often the case on warm, humid days when cooling and dehumidifying the outdoor air becomes a problem. Low efficiency filter material was used in the central air handling units. This filter material may be adequate to stop large particles, but smaller particles, including microorganisms could pass through the filter and settle out on the interior surfaces of the air handling unit, including the lined-supply ductwork. Inspection of the cooling coils was not possible due to the design of the unit. Exhaust grilles in the shower rooms of the male and female R&D areas were filled with lint accumulation. This was most likely the result of an unvented dryer being used in the female shower room. In addition, bird droppings were seen on the roof as well as a dead pigeon. According to maintenance staff, large flocks of pigeons had been roosting on the roof until they were exterminated earlier this year. Accumulated bird droppings may harbor the infectious fungi *Cryptococcus neoformans* and *Histoplasma capsulatum* as well as other fungi and bacteria.[1] This could be a problem, since the outdoor air intakes for the building are located on the roof.

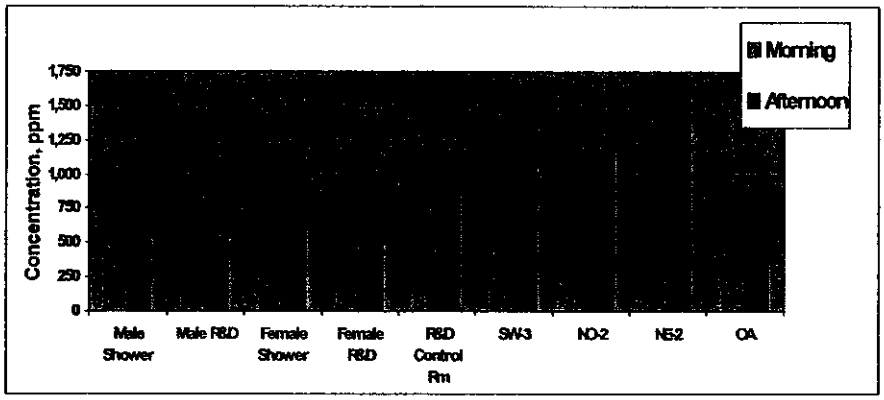
We measured indicators of occupant comfort including carbon dioxide (CO_2) concentration, temperature (T), and relative humidity (RH) twice during the work day (late morning and late afternoon) at the following eight locations: male shower, male R&D, female shower, female R&D, R&D control room, and cell blocks SW-3, NO-2, and NE-2. As a baseline, we measured the same indicators in the outdoor air near the air intake serving these areas.

Real-time CO_2 concentrations were measured by the TSI 8550 Q-Trak™ IAQ Monitor using a non-dispersive infrared absorption detector to measure CO_2 in the range of 0-5,000 parts per million (ppm), with a precision of ±50 ppm. Instrument zeroing and calibration were performed prior to use with zero air and a known concentration of CO_2 span gas (1,000 ppm). The monitor is capable of providing direct readings for dry-bulb temperature and RH, ranging from 32 to 122°F ± 1.0°F and 5 to 95% ± 3%, respectively. Quantitative airflow measurements were made with the TSI VelociCalc® Plus, Model 8360 Monitor. Airflow through exhaust grilles located

in the male and female shower was measured directly in cubic feet per minute (cfm).

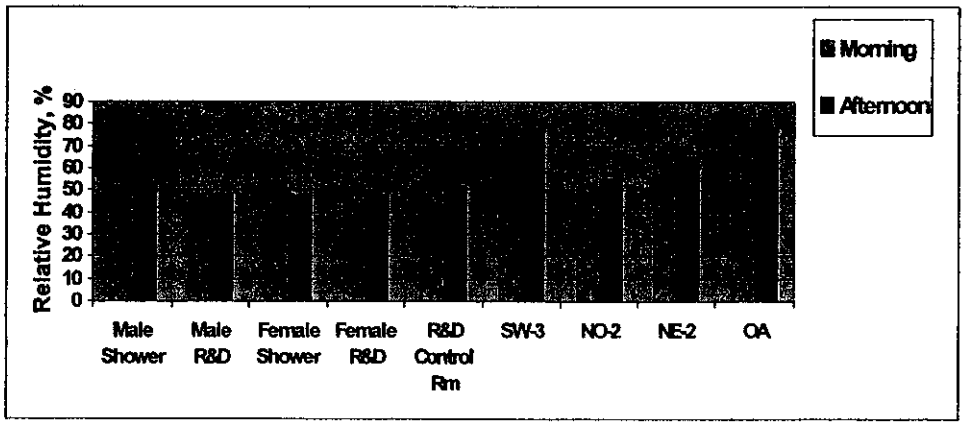
Carbon dioxide measurements are presented in Figure 1. Carbon dioxide concentrations ranged from 420 to 1,600 ppm, while the outdoor ambient concentration was approximately 370 ppm. Concentrations near or above 800 ppm are indicative of poor indoor air quality. Unless there is a source of CO_2, other than the normal expired breath of the occupants, this data suggests that more outside air should be introduced into some areas of the facility (i.e., the R&D control room and the cell blocks). Furthermore, in situations where occupant density is low (less than or equal to one person per 1,000 square feet), the concentration of CO_2 may not be an accurate index of overall indoor air quality; it may overestimate the amount of ventilation being provided. This was most likely the case throughout the male R&D area and the female shower room, where only one or two people were present during the sampling period.

Figure 1. Carbon dioxide measurements.



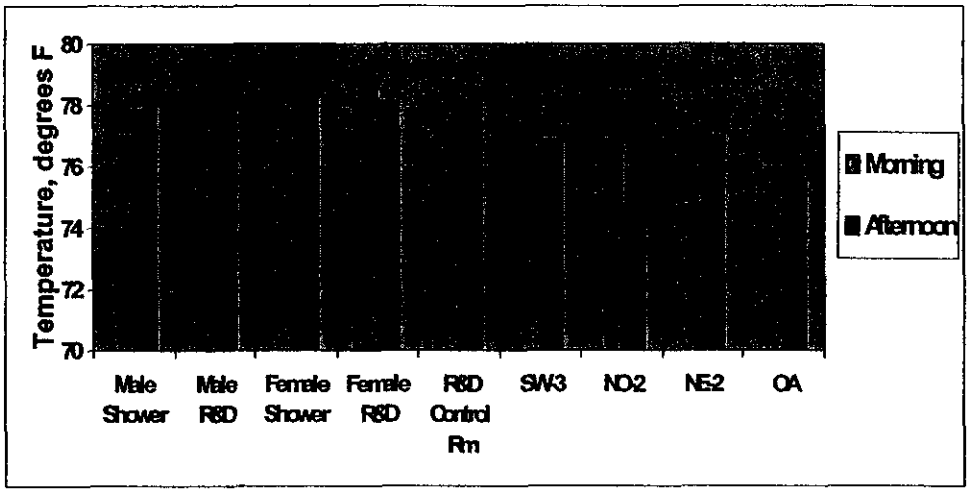
RH measurements are presented in Figure 2. RH levels ranged from 47 to 78 percent, while the outdoor RH ranged from 74 to 77 percent. The American Society for Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that indoor RH be maintained between 30 and 60 percent to prevent the growth of microorganisms.[8] RH in two of the evaluated cell blocks (SW-3 and NE-2) exceeded 60 percent. Both of these cell blocks had their fire dampers open on the day of the site visit.

Figure 2. Relative humidity measurements.



Temperature measurements are shown in Figure 3. Indoor temperatures ranged from 74 to 79°F, while the outdoor temperature remained constant at 75°F. The indoor temperatures were within the recommended ASHRAE comfort guidelines for summer (73-79°F).

Figure 3. Temperature measurements.



Airflow measured through the exhaust grilles located in the male R&D shower room were found to be lower than the flow rates described during the opening meeting. Measured exhaust flow rates from the two grilles were 70 cfm and 24 cfm, compared to volumetric flow rates of 160 cfm and 90 cfm previously reported by the maintenance staff. Flow rates from two of the three exhausts in the female shower room were 70 cfm and 45 cfm. Exhaust grilles in both shower rooms were plugged with lint from the unvented dryer. Balancing of the HVAC system would need to be done to ensure the appropriate amount of outdoor air per person is provided to these areas. ASHRAE states that rooms with showers must be maintained at a negative pressure with respect to the surrounding spaces (not less than 2 or 3 cfm of exhaust per square foot) in order to control humidity.[9]

During the walk-through survey, a correctional officer was observed smoking inside one of the cellblock bubbles. Environmental tobacco smoke (ETS) is associated with lung cancer and cardiovascular disease in adults.[10,11] It is also a cause of annoying odor and sensory irritation. The U.S. Environmental Protection Agency (EPA) has classified ETS as a known human (Group A) carcinogen.[12] NIOSH considers ETS to be a potential occupational carcinogen and believes that workers should not be involuntarily exposed to tobacco smoke.[13] The state of New York Department of Correctional Services has recently implemented a ban on indoor smoking in their state prisons which they plan to have fully implemented by January 2001.[14]

Conclusions and Recommendations

A potential health hazard was found to exist at the D.C. Jail in Washington, D.C. All shower water temperatures were found to be in between 68 - 113°F which is the optimum temperature range for *Legionella* growth. In addition, cooling towers were within 25 feet of the outdoor air intakes and are known for containing the organism. IEQ problems were found relating to

inadequate ventilation in the bubbles of all cellblocks evaluated and the presence of ETS. The following recommendations are offered to correct the deficiencies identified during the NIOSH evaluation and to optimize employee comfort.

1. Water services should operate at temperatures that prevent the proliferation of *Legionella* by maintaining hot water temperatures above 60°C (140°F) and cold water temperatures below 20°C (68°F).[15,16] Where the risk of scalding is great during the use of showers, the use of thermostatically controlled mixing valves (i.e., valves which are unaffected by changes in water pressure and automatically close the hot water supply if the cold water fails) will allow the hot water system to run safely at higher temperatures. Supervised weekly flushing of fixture heads with 170°F water is recommended.[9] Water stagnation should be avoided in plumbing systems.

2. Maintain cooling towers according to manufacturers' specifications. Drain and mechanically clean the towers at least two times per year. Use an effective biocide to control the presence of slime-producing microorganisms. A document entitled "Control of *Legionella* in Cooling Towers: Summary Guidelines[17]" contains further information; a copy is enclosed. The outdoor air intakes should be a sufficient distance from the cooling towers, and have efficient drift eliminators to intercept water droplets where the air is discharged.

3. Ventilation rates should comply with those recommended by the American Society for Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) in its Standard 62-1999, "Ventilation for Acceptable Indoor Air Quality" ASHRAE recommends an effective outside air exchange rate of 20 cubic feet per minute (cfm) per person for cells and 15 cfm per person for correctional officer stations (such as the bubbles in the cellblocks).[8] The fire dampers in the cells blocks should remain closed to avoid significant effects on the performance of the ventilation system.

4. Ensure that shower rooms are maintained under sufficient negative pressure to control humidity in the surrounding areas. Make-up air can be supplied to the shower rooms from adjacent areas.

5. The dryer in the female R&D shower room should be vented appropriately, and the lint should be cleared from the exhaust grills in both shower areas.

6. The most direct and effective method of eliminating ETS from the workplace is to prohibit smoking in the workplace. Until this measure can be achieved, employers can designate separate, enclosed areas for smoking, with separate ventilation. Air from this area should be exhausted directly outside and not recirculated within the building or mixed with the general dilution ventilation for the building. Ventilation of the smoking area should meet general ventilation standards, such as ASHRAE Standard 62-1999, and the smoking area should have slight negative pressure to ensure airflow into the area

rather than back into the airspace of the workplace.[8]

7. A test and balance firm should be consulted to evaluate the general ventilation system for the building. All components of the mechanical system should be placed on a preventive maintenance schedule. Written records should be maintained on all maintenance activities. Consideration should be given to replacing the internally-lined central supply air ductwork due to accumulation of dirt from inadequate filtration and/or from the deterioration of the internal acoustical lining. Current plans do not call for its replacement.

8. The current filtration is not adequate to prevent dust accumulation in the systems. Dust accumulation could be a health problem for sensitive individuals. Filters with an ASHRAE dust spot efficiency rating of 35 to 60 percent should be used instead of the current filters which are less than 10 percent efficient. The most efficient filters whose pressure drop the system can handle should be used. A mechanical firm should be consulted to determine the maximum filter efficiency.

9. The D.C. DOC should establish an employee health service for DOC employees, located either at the D.C. Jail or elsewhere (perhaps as part of a department-wide or municipal employee health service). Such a service should provide, directly or through arrangements with another city agency or private contractor, ongoing preventive health services, as well as evaluation of work-related injuries and illnesses. Such a service would be a centralized source of employee health information, facilitating both routine occupational health surveillance and investigation of suspected occupational health problems.

10. Correctional facility employees are considered to be at high-risk for TB infection.[18,19,20] Therefore, an effective TB infection control program should be implemented. The following recommendations were adapted from those published by the CDC for employees in correctional institutions.

    - A TB policy and program that follows the 1994 CDC Guidelines should be established for DOC employees who have direct contact with prisoners. This program should be developed in consultation with qualified medical and/or public health personnel. Data collected through the recommended TB screening program will help establish the magnitude of the risk for TB infection and the need for changes in current measures. Employee representatives should be involved in the development of the policy and program. The program should be offered at no cost to employees.

    - All employees who have direct contact with an inmate who is known to have, or highly suspected of having, active TB should receive a tuberculin skin test (TST) as soon as possible after exposure occurs. If this TST is negative, then the

employee should be retested three months after the exposure to see if infection with TB has taken place.

- At the time of employment, employees should receive a Mantoux TST unless documentation is provided for 1) a previous positive reaction, 2) completion of current preventive drug therapy, or 3) current or completed therapy for active TB disease. Individuals who have a history of vaccination with Bacille of Calmette & Gudrin (BCG) should receive a TST. Employees with a positive TST should be evaluated for active TB. Employees with negative TSTs should be retested at least yearly to identify persons whose skin test converts to positive.

- Individual TST results and clinical evaluations should be maintained in confidential employee health records, and should be recorded in a retrievable aggregate data base of all employee test results. Identifying information should be handled confidentially. Summary data (e.g., the percentage of positive reactions among all tested) can be reported to management and employees. Other than reporting to the tested individual, and to public health authorities in the case of TB, results should remain confidential.

- The rate of skin test conversions should be calculated periodically to estimate the risk of acquiring new infection and evaluate the effectiveness of control measures. On the basis of this analysis, the frequency of re-testing may be altered accordingly.

11. The U.S. Department of Justice's National Institute of Justice, in July 1999, issued a document entitled "Issues and Practices 1996-1997 Update: HIV/AIDS, STDS, and TB in Correctional Facilities"[20] which states that "universal precautions" should be practiced by all correctional facility employees. The principal of universal precautions means that one should treat all persons as if they were infected with a bloodborne pathogen (i.e., HIV, hepatitis B, hepatitis C). Unprotected contact with body fluids that are considered potentially infective, especially blood and semen, should be avoided.[21] Universal precautions are not necessary for contact with saliva, tears, sweat, vomit, urine, or feces unless they contain blood.

Immediately following an exposure to blood or body fluids, or to objects potentially contaminated with blood or body fluids, the following should occur: areas of skin exposed to needlesticks and cuts should be washed with soap and water; after splashes to the nose, mouth, or skin, the area should be flushed with water; and after splashes to the eyes, the eyes should be irrigated with clean water, saline, or sterile irrigants. All employee needlesticks, cuts from other sharp objects, or splashes onto the skin, eyes, nose, or mouth should be immediately reported and evaluated by an appropriate health care professional. The DOC should have a program in place that emphasizes and ensures that this reporting and medical follow-up is taking place.[22,23]

The Occupational Safety and Health Administration (OSHA) requires that correctional staff who have direct contact with inmates be offered hepatitis B vaccination.[21] One to two months after completion of the 3-dose vaccination series, employees should be tested for antibody to hepatitis B surface antigen (anti-HBs). Booster doses of hepatitis B vaccine are not considered necessary, and periodic serologic testing to monitor antibody concentrations after completion of the vaccine series is not recommended.

We sincerely hope that the NIOSH evaluation and the information presented will assist you in your efforts to provide a safe working environment for the correctional officers at the D.C. Jail. Thank you for your cooperation during this survey. This letter constitutes the final report of the NIOSH health hazard evaluation. For the purpose of informing employees, copies of this report should be posted by the employer in a prominent place accessible to employees for a period of 30 days. If you have any questions regarding the information presented in this letter, please contact Angela Weber at 404-639-0444 or Dr. Mitchell Singal at 513-841-4252.

Angela M. Weber, M.S.
Industrial Hygienist
Hazard Evaluations and Technical Assistance Branch
Division of Surveillance, Hazard Evaluations and Field Studies

Mitchell Singal, M.D., M.P.H.
Senior Medical Officer
Hazard Evaluations and Technical Assistance Branch
Division of Surveillance, Hazard Evaluations and Field Studies

3 Enclosures

cc (w/o enclosures):
Odie Washington (D.C. DOC)
James Anthony (D.C. DOC)
Patricia Britton (D.C. DOC
John S. Henley (D.C. DOC)
Dr. Stanley Harper (D.C. DOC)
Irving Robinson (FOP)
Alan Lucas (DOC Employee Representative)
Dr. Martin E. Levy (D.C. DOH)
Maurice Knuckles (D.C. DOH)
John Cates (D.C. OSH)
Barry Fields (NCID)

References

1. ACGIH [1999]. Bioaerosols: assessment and control. Cincinnati, OH: American Conference of Governmental Hygienists.

2. CDC [1994a]. Legionnaires' disease associated with cooling towers – Massachusetts, Michigan, and Rhode Island, 1993. MMWR 43(27):491.

3. CDC [1994b]. Update: Outbreak of Legionnaires' disease associated with a cruise ship, 1994. MMWR 43(31):574.

4. CDC [1990]. Epidemiologic notes and reports Legionnaires' disease outbreak associated with a grocery store mist machine – Louisiana, 1989. MMWR 39(7):108.

5. CDC [1997]. Legionnaires' disease associated with a whirlpool spa display – Virginia, September-October, 1996. MMWR 46(4):83.

6. Wise M, Addiss D, LaVenture M, et al.[1987]. Control of *Legionella* in cooling towers: summary guidelines. Madison, Wisconsin: Wisconsin Department of Health and Social Services, 1987.

7. OSHA [2000]. Chapter 7: Legionnaires' disease. In OSHA Technical Manual. [http://www.osha-slc.gov/dts/osta/otm/otm_iii/otm_iii_7.html]. Accessed on August 11.

8. ASHRAE [1999]. Ventilation for acceptable indoor air quality, standard 62-1999. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

9. ASHRAE [1999]. ASHRAE handbook: Heating, ventilating, and air-conditioning applications. Atlanta, Georgia: American Society for heating, ventilating, and air-conditioning engineers, Inc.

10. U.S. DHHS [1986]. The health consequences of involuntary smoking. A report of the surgeon general. U.S. Department of Health and Human Services, Public Health Service, Office of the Assistant Secretary for Health, Office of Smoking and Health. DHHS Publication No. (PHS) 87-8398.

11. Taylor AE, Johnson DC, Kazemi H [1992]. Environmental tobacco smoke and cardiovascular disease: a position paper from the council on cardiopulmonary and critical care. American Heart Association, Dallas, Texas.

12. U.S. EPA [1993]. Respiratory health effects of passive smoking: lung cancer and other disorders. Washington, D.C.: U.S. Environmental Protection Agency Publication No. EPA/600/6-90/006F.

13. NIOSH [1989]. Current Intelligence Bulletin 54: Environmental tobacco smoke in the workplace: lung cancer and other health effects. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 91-108.

14. NY DOC [1999]. DOCS begins phase-in of ban on indoor smoking in state prisons. [http://www.docs.state.ny.us/PressRel/nosmoker.html]. Date accessed: September 7.

15. ASTM [1995]. Draft guide for inspecting water systems for *Legionella* and investigating possible outbreaks of Legionellosis (Legionnaires' disease or Pontiac fever). American Society for Testing and Materials Designation: D22.05.06 (Biological Aerosols).

16. ASHRAE [2000]. *Minimizing the risk of legionellosis associated with building water systems*, standard 12-2000. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

17. Cullen T, Torphy J, Imm I, Davis J [1987]. Control of *Legionella* in cooling towers: Summary guidelines. Wisconsin Department of Health and Social Services, June 1987.

18. CDC [1994]. Guidelines for preventing the transmission of *Mycobacterium tuberculosis* in health care facilities. MMWR 43(No. RR–13).

19. CDC [1996]. Prevention and control of tuberculosis in correctional facilities: recommendations of the advisory council for the elimination of tuberculosis. MMWR 45 (RR-8):1-27.

20. NIJ [1999]. Issues and practices 1996-1997 Update: HIV/AIDS, STDS, and TB in correctional facilities. Washington, D.C.: National Institute of Justice, July,1999 (NCJ #176344).

21. CFR [1991]. 29 CFR 1910.1030 Bloodborne pathogens standard. Code of Federal Regulations. Washington, D.C.: U.S. Government Printing Office, Office of the Federal Register.

22. CDC [1998]. Update: universal precautions for prevention of transmission of human immunodeficiency virus, hepatitis B virus, and other bloodborne pathogens in health-care settings. MMWR 37:377-82 and 387-8.

23. CDC [1998]. Recommendations for prevention and control of hepatitis C virus (HCV) infection and HCV-related chronic disease. MMWR 47 (RR-19).

APPENDIX A

EVALUATION CRITERIA

LEGIONNAIRES' DISEASE

It is estimated that illness related to *Legionella* bacteria (legionellosis) affects 50,000 to 100,000 people annually in the United States, and it accounts for up to 7 percent of community-acquired pneumonias.[1] Serologic surveys indicate that about half of adults show evidence of prior exposure to at least one *Legionella* species.[2] The source of *Legionella* is not identified in most sporadic cases of legionellosis. The Centers for Disease Control and Prevention standard protocol for investigating legionellosis does not recommend environmental sampling in following up isolated cases.

Legionellosis can present in one of two ways. Legionnaires' disease, one form of legionellosis, typically includes pneumonia and can affect numerous organs of the body; illness usually occurs within 3 to 9 days of infection with the bacteria. Pontiac fever, the other clinical form of legionellosis, presents as a flu-like illness that occurs within 48 to 72 hours after exposure to the bacteria. Why this bacteria can cause two distict clinical syndromes has been attibuted to the inability of some legionella to multiply in human tissue, and differences in host susceptibility.[3]

The organisms are ubiquitous in the environment and have been isolated from nearly every natural location where they have been sought.[4] Reservoirs are primarily aqueous and include potable water systems, air-conditioning cooling towers, evaporative condensers and hot-water systems.[4-7] Epidemiological evidence indicates the primary mode of transmission is via the airborne route, from aerosol-producing devices.[5]

REFERENCES

1. Feeley JC [1989]. Legionellosis - Position Statement. American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

2. Bernstein MS, Locksley RM [1994]. Legionella Infections, Harrison's Textbook of Internal Medicine. 654-58. McGraw-Hill. New York.

3. Fields BS [1997]. Legionellae and Legionnaires' disease. In: Manual of Environmental Microbiology. Hurst CJ, Knudsen GR, McInerney MJ, et al., Eds. American Society for Microbiology Press, Washington, D.C.

4. Burge HA [1989]. Indoor air and infectious disease. Occupational Medicine: State of the Art Reviews. 4(4):713-721.

5. APHA [1990]. Control of Communicable Diseases in Man. Benenson, AS, ed. 15th ed. Washington, DC: American Public Health Association.

6. EPA [1991]. Introduction to indoor air quality, a reference manual. Washington, DC: U.S. Environmental Protection Agency, Office of Air and Radiation. EPA Publication EPA/400/3-91/003.

7. Muraca PQ, Stout JE, Yu VL, Yee, YC (1988). Legionnaires disease in the work environment: implications for environmental health. Am. Ind. Hyg. Assoc. J. 49(11): 584-590.

INDOOR ENVIRONMENTAL QUALITY

Scientists investigating indoor environmental problems believe that there are multiple factors contributing to building-related occupant complaints.[6,7] Among these factors are imprecisely defined characteristics of heating, refrigerating, and air-conditioning (HVAC) systems, cumulative effects of exposure to low concentrations of multiple chemical pollutants, odors, elevated concentrations of particulate matter, microbiological contamination, and physical factors such as thermal comfort, lighting, and noise.[4-8] Reports are not conclusive as to whether increases of outdoor air above currently recommended amounts are beneficial.[9] However, rates lower than these amounts appear to increase the rates of complaints and symptoms in some studies.[10] Design, maintenance, and operation of HVAC systems are critical to their proper functioning and provision of healthy and thermally comfortable indoor environments. Indoor environmental pollutants can arise from either indoor or outdoor sources.[11]

There are also reports describing results which show that occupant perceptions of the indoor environment are more closely related to the occurrence of symptoms than the measurement of any indoor contaminant or condition.[12] Some studies have shown relationships between psychological, social, and organizational factors in the workplace and the occurrence of symptoms and comfort complaints.[13,14]

Less often, an illness may be found to be specifically related to something in the building environment. Some examples of potentially building-related illnesses are allergic rhinitis, allergic asthma, hypersensitivity pneumonitis, Legionnaires' disease, Pontiac fever, carbon monoxide poisoning, and irritant reaction to boiler corrosion inhibitors. The first three conditions can be caused by various microorganisms or other organic material. Legionnaires' disease and Pontiac fever are caused by *Legionella* bacteria. Sources of carbon monoxide include vehicle exhaust and inadequately ventilated kerosene heaters or other fuel-burning appliances. Exposure to boiler additives can occur if boiler steam is used for humidification or is released by accident.

Problems that NIOSH investigators have found in the non-industrial indoor environment have included poor air quality due to ventilation system deficiencies, overcrowding, volatile organic chemicals from office furnishings, office machines, structural components of the building and contents, tobacco smoke, microbiological contamination, and outside air pollutants; comfort problems due to improper temperature and relative humidity (RH) conditions, poor lighting, and unacceptable noise levels; adverse ergonomic conditions; and job-related psychosocial stressors.

Standards specifically for the non-industrial indoor environment do not exist. NIOSH, the Occupational Safety and Health Administration (OSHA), and the American Conference of Governmental Industrial Hygienists (ACGIH) have published regulatory standards or recommended limits for occupational exposures.[15,16,17] With few exceptions, pollutant concentrations observed in the office work environment fall well below these published occupational standards or recommended exposure limits. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) has published recommended building ventilation and thermal comfort guidelines.[18,19] The ACGIH has also developed a manual of guidelines for approaching investigations of building-related symptoms that might be caused by airborne living organisms or their effluents.[20]

Measurement of indoor environmental contaminants has rarely proved to be helpful, in the general case, in determining the cause of symptoms and complaints except where there are strong or unusual sources, or a proved relationship between a contaminant and a building-related illness. However, measuring

ventilation and comfort indicators such as carbon dioxide (CO_2), temperature, and RH is useful in the early stages of an investigation in providing information relative to the proper functioning and control of HVAC systems.

Carbon Dioxide

Carbon dioxide is a normal constituent of exhaled breath and, if monitored, can be used as a screening technique to evaluate whether adequate quantities of outside air are being introduced into an occupied space. ASHRAE's most recently published ventilation standard, ASHRAE 62-1989, Ventilation for Acceptable Indoor Air Quality, recommends outdoor air supply rates of 20 cubic feet per minute per person (cfm/person) for office spaces, and 15 cfm/person for reception areas, classrooms, libraries, auditoriums, and corridors.[19] Maintaining the recommended ASHRAE outdoor air supply rates when the outdoor air is of good quality, and there are no significant indoor emission sources, should provide for acceptable indoor air quality.

Indoor CO_2 concentrations are normally higher than the generally constant ambient CO_2 concentration (range 300-350 parts per million [ppm]). Carbon dioxide concentration is used as an indicator of the adequacy of outside air supplied to occupied areas. When indoor CO_2 concentrations exceed 800 ppm in areas where the only known source is exhaled breath, inadequate ventilation is suspected.[21] Elevated CO_2 concentrations suggest that other indoor contaminants may also be increased. It is important to note that CO_2 is not an effective indicator of ventilation adequacy if the ventilated area is not occupied at its usual level.

Temperature and Relative Humidity

Temperature and RH measurements are often collected as part of an indoor environmental quality investigation because these parameters affect the perception of comfort in an indoor environment. The perception of thermal comfort is related to one's metabolic heat production, the transfer of heat to the environment, physiological adjustments, and body temperature.[22] Heat transfer from the body to the environment is influenced by factors such as temperature, humidity, air movement, personal activities, and clothing. The American National Standards Institute (ANSI)/ASHRAE Standard 55-1981 specifies conditions in which 80% or more of the occupants would be expected to find the environment thermally acceptable.[18] Assuming slow air movement and 50% RH, the operative temperatures recommended by ASHRAE range from 68-74°F in the winter, and from 73-79°F in the summer. The difference between the two is largely due to seasonal clothing selection. ASHRAE also recommends that RH be maintained between 30 and 60% RH.[18] Excessive humidities can support the growth of microorganisms, some of which may be pathogenic or allergenic.

REFERENCES

1. Kreiss KK, Hodgson MJ [1984]. Building associated epidemics. In: Walsh PJ, Dudney CS, Copenhaver ED, eds. Indoor air quality. Boca Raton, FL: CRC Press, pp 87-108.

2. Gammage RR, Kaye SV, eds [1985]. Indoor air and human health: Proceedings of the Seventh Life Sciences Symposium. Chelsea, MI: Lewis Publishers, Inc.

3. Burge S, Hedge A, Wilson S, Bass JH, Robertson A [1987]. Sick building syndrome: a study of 4373 office workers. Ann Occup Hyg 31:493-504.

4. Kreiss K [1989]. The epidemiology of building-related complaints and illness. Occupational Medicine: State of the Art Reviews 4(4):575-592.

5. Norbäck D, Michel I, Widstrom J [1990]. Indoor air quality and personal factors related to the sick building syndrome. Scan J Work Environ Health 16:121-128.

6. Morey PR, Shattuck DE [1989]. Role of ventilation in the causation of building-associated illnesses. Occupational Medicine: State of the Art Reviews 4(4):625-642.

7. Molhave L, Bach B, Pedersen OF [1986]. Human reactions to low concentrations of volatile organic compounds. Environ Int 12:167-176.

8. Burge HA [1989]. Indoor air and infectious disease. Occupational Medicine: State of the Art Reviews 4(4):713-722.

9. Nagda NI, Koontz MD, Albrecht RJ [1991]. Effect of ventilation rate in a health building. In: Geshwiler M, Montgomery L, and Moran M, eds. Healthy buildings. Proceedings of the *ASHRAE/ICBRSD conference* IAQ'91. *Atlanta, GA: The American Society of Heating,* Refrigerating, and Air-Conditioning Engineers, Inc.

10. Jaakkola JJK, Heinonen OP, Seppänen O [1991]. Mechanical ventilation in office buildings and the sick building syndrome. An experimental and epidemiological study. Indoor Air 1(2):111-121.

11. Levin H [1989]. Building materials and indoor air quality. Occupational Medicine: State of the Art Reviews 4(4):667-694.

12. NIOSH [1991]. Hazard evaluation and technical assistance report: Library of Congress, Washington. D.C. Cincinnati, OH: U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, NIOSH Report No. HHE 88-364-2104.

13. Boxer PA [1990]. Indoor air quality: a psychosocial perspective. JOM 32(5):425-428.

14. Baker DB [1989]. Social and organizational factors in office building-associated illness. Occupational Medicine: State of the Art Reviews 4(4):607-624.

15. CDC [1988]. NIOSH recommendations for occupational safety and health standards 1988. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health. MMWR 37 (supplement S-7).

16. OSHA, Code of Federal Regulations [1989]. OSHA Table Z-1. The Occupational Safety and Health Administration's General Industry Standards, 29 CFR 1910.1000. Washington, DC: U.S.

Government Printing Office, Federal Register.

17. ACGIH [1991]. Threshold limit values for chemical substances in the work environment for 1991-1992. Cincinnati, OH: American Conference of Governmental Industrial Hygienists.

18. ASHRAE [1981]. Thermal environmental conditions for human occupancy. American National Standards Institute/ASHRAE standard 55-1981. Atlanta, GA: American Society for Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

19. ASHRAE [1989]. Ventilation for acceptable indoor air quality, standard 62-1989. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

20. ACGIH [1989]. Guidelines for the assessment of bioaerosols in the indoor environment. Cincinnati, OH: American Conference of Governmental Industrial Hygienists.

21. 59 Federal Register 15969 [1994]. Occupational Safety and Health Administration: indoor air quality; proposed rule. To be codified at 29 Code of Federal Regulations, Parts 1910, 1915, 1926, and 1928. Washington, D.C.: U.S. Government Printing Office.

22. NIOSH [1986]. Criteria for a recommended standard: occupational exposure to hot environments, revised criteria. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 86-13.

EXHIBIT D

Occupational Health and Safety Complaint to Mayor Williams dated November 5, 2001.

Fraternal Order of Police
Department of Corrections Labor Committee
711 4th Street, Northwest
Washington, D.C. 20001
Phone 202-737-3505
Fax 202-737-1890

November 5, 2001

VIA FACSIMILE AND FIRST CLASS MAIL

The Honorable Anthony Williams
Mayor for the District of Columbia
441 4th Street, NW
Washington, DC 20001

Re: Violations of D.C. Code § 36-228 and D.C. Code § 36-1203(a)

Dear Mayor Williams:

Enclosed is a formal complaint by Fraternal Order of Police/Department of Corrections Labor Committee regarding continuing unsafe working conditions at the D.C. Jail. We insist that your office and all appropriate D.C. Government officials take immediate action to correct these unsafe conditions before our members suffer injury or death.

Sincerely,

William H. Dupree, Chairman

cc: Ivan Walks, Director, DC Health Department

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF THE MAYOR

FRATERNAL ORDER OF POLICE/ DEPARTMENT OF CORRECTIONS LABOR COMMITTEE, on behalf of represented employees of D.C. Department of Corrections,	)
Complainant	)
v.	)
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS, an Employer, and Odie Washington, its Director,	)
Respondents.	)

The Fraternal Order of Police/Department of Corrections Labor Committee makes a formal complaint against the District of Columbia Department of Corrections, an employer under D.C. Code § 36-222(1), and D.C. Code § 36-1201(6) for violations of, and continuing violations of, D.C. Code § 36-228(a), (b), (c) and (d), and D.C. Code § 36-1203(a)(1) and (2) for failure to furnish a safe place of employment, failure to adopt and use practices, means, methods, operations and processes to provide a reasonably safe place of employment for District employees stationed at the D.C. Jail at 1901 D. Street, S.E., Washington, DC 20003.

1. In September 2000, FOP/DOC Labor Committee filed a complaint with the Office of Occupational Safety & Health regarding unsafe conditions at the Receiving and Discharge Section of the D.C. Jail. These unsafe conditions lead to the injury of at

least one correctional officer, Allan Lucas, who was diagnosed with Legionnaire's Disease, caused by the conditions at that section. This incident was highly publicized nation-wide. It is also suspected that the death of correctional officer, Willie Crutchfield in June 2000 was attributed to conditions at that section.

2. The D.C. Office of Occupational Safety and Health and the National Institute for Occupational Safety and Health conducted investigations and issued reports requiring the Department of Corrections to adopt and use practices, means, methods, operations and processes to render employment at the D.C. Jail reasonably safe.

3. FOP/DOC Labor Committee filed a formal grievance under the current Working Conditions Agreement with the Department of Corrections in order to enforce the recommendations of NIOSH and DC OSH, in accordance with provisions of that Agreement requiring safe working conditions. The Department of Corrections, under advice of the Mayor's Office of Labor Relations and Collective Bargaining, has refused to correct these unsafe conditions or respond in any constructive way to the FOP/DOC Labor Committee Working Conditions Grievance. The Department of Corrections, under advice from the Mayor's Office of Labor Relations and Collective Bargaining, refuses to arbitrate any disputes regarding the working conditions of employees represented by FOP/DOC Labor Committee.

4. On October 15, 2001, more than a year after the NIOSH recommendations, DOC Officer Richard Lessington, employed at the Receiving and Discharge Section of the D.C. Jail has been diagnosed with Hepatitis and suspected traces of Legionnaire's Disease arising from the working conditions in that section. Officer Lessington's physician suggested that his work environment be evaluated without delay.

5. On November 2, 2001, Officer Erica Tolson was diagnosed with traces of Legionnaire's Disease. Officer Tolson had been normally assigned to the DC Jail's South 3 cellblock; however, she have been assigned and in training in the Receiving and Discharge Section of the D.C. Jail for the past three weeks.

6. Neither the Department of Corrections, nor the Mayor's office, have met the obligations of D.C. Code § 36-228 and D.C. Code § 36-1203(a) regarding conditions at the D.C. Jail to render employment and place of employment reasonably safe, to submit reports required by those sections or to take action required by those sections.

7. The current conditions at the D.C. Jail constitute an imminent danger and can reasonably be expected to cause death or serious physical harm immediately or before the imminence of danger can be eliminated through D.C. government procedures.

8. As recent as November 5, 2001, FOP/DOC Labor Committee's Legal Counsel spoke with Industrial Hygienist Yueh-Tsun Chen of DC OSH. According to Mr. Chen, he has reported the unsafe condition to DOC Officials and advise them on how to correct the conditions.

9. FOP/DOC Labor Committee demands that pursuant to D.C. Code § 36 1218, that steps be taken to avoid, correct and remove the imminent danger to employees represented by FOP/DOC Labor Committee working at the D.C. Jail. Failure to rectify danger in light of the uncorrected unsafe conditions at the D.C. Jail, which the Administration has had knowledgeable of for more than one year, shall be deemed arbitrary and capricious pursuant to D.C. Code § 36-1218(d).

10. The Correctional Officers employed at the District of Columbia Department of Corrections provide protection to the residents, citizens and visitors to our Nation's Capital. The treatment shown by the Administration toward these sworn law-enforcement officers is symptomatic of and evidence of, the Department of Corrections failure to comply with duties under D.C. Code § 36-228 and D.C. Code § 36-1203(a)(1) and (2).

11. WHEREFORE, FOP/DOC Labor Committee demands that the Mayor and Department of Corrections take immediate action to correct said unsafe conditions at the D.C. Jail.

FRATERNAL ORDER OF POLICE/
DEPARTMENT OF CORRECTIONS
LABOR COMMITTEE,

By:

WILLIAM H. DUPREE, CHAIRMAN
711 4th Street, N.W.
Washington, DC 20001
Ph: (202) 737-3505
Fax: (202) 737-1505

EXHIBIT E

Correspondence dated November 13, 2001 from Odie Washington to J. Patrick Hickey, Esq. and others.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS

Office of the Director

November 13, 2001

By Facsimile and U.S. Mail

J. Patrick Hickey, Esquire
Benjamin M. Dean, Esquire
Shaw Pittman
2300 N Street, NW
Washington, D.C. 20032-1128

Marie Sennett, Esquire
Executive Director
D.C. Prisoners Legal Services Project
1400 20th St., N.W., Suite 117
Washington, D.C. 20036

Karen M. Schneider
Special Officer of the U.S. District Court
1130 17th Street, N.W., Suite 400
Washington, D.C. 20836

Re: Campbell v. McGruder, et al.
Inmates of D.C. Jail, et al. v. Jackson, et al.

Dear Counsel:

This letter is in response to the meeting on Monday, November 5, 2001 between Department of Corrections' officials, a representative from the Office of the Corporation Counsel, plaintiffs' attorneys and the Special Officer of the U.S. District Court regarding the population cap at the Central Detention Center (D. C. Jail). At the meeting, the Department of Corrections (DOC) provided background information regarding the upcoming closure of Lorton on or about November 13, 2001, and the necessity for the DOC to transfer, and temporarily house, the remaining inmates, approximately 300, from Lorton to the D.C. Jail. You were also advised that the Department of Corrections is prepared to request that the U. S. District Court vacate its 1985 order that limited the population at the D.C. Jail. As noted in the meeting, it is our hope that you will support this effort to vacate the population cap and thereby avoid further litigation of this matter.

Set forth below is the DOC's plan for housing additional inmates at the D.C. Jail and addressing some of the areas of concern that you raised during our meeting. This

specifically addresses the housing of those inmates from Lorton who will temporarily be housed at the Jail to facilitate the closing of Lorton. However, it will also clearly demonstrate the ability of the Jail to safely and securely house an inmate population over and above 1,674. With the closure of Lorton, the criminal justice system in the District of Columbia will experience a significant shortage of detention beds unless the population cap at the D.C. Jail is removed. As noted during our meeting, the constitutional violations giving rise to the 1985 court-ordered cap have been remedied. Moreover, there are no current ongoing constitutional violations that warrant a population cap at that facility.

There were 281 inmates transferred from the Central Facility to effectuate the closure of that facility. Those inmates will be housed at the D.C. Jail only until they can be transferred to Federal Bureau of Prisons' (FBOP) facilities. The FBOP and the U.S. Marshal Service (USMS) on November 14 and 15, 2001 will transfer approximately 100 of these inmates. The DOC will transfer approximately 40 others to the Correctional Treatment Facility and halfway houses. The remaining inmates from this population will be transferred within the following weeks.

1. Correctional Staffing

The additional inmates transferred to the D.C. Jail from Lorton will be housed in cellblocks SE1 and SW1. These cellblocks are now vacant and have been steamed cleaned and sanitized. Currently there are two case managers assigned to those units, one case manager per cellblock. These two case managers will remain assigned to those cellblocks and will become the case managers for the additional inmates. In addition, with the closure of Lorton, there will be six additional case mangers transferred from Lorton to assist in providing services to the inmates housed at the Jail. (See Attachment 1, Chief Manager, Case Managers and Clerical Staff, Housing and Staff Assignments).

There is currently a sufficient staffing complement already in place at the Jail to handle an additional 300 or more inmates. An additional 150 correctional officers from Lorton will be assigned to the Jail to fill all vacancies and replace all unavailable for duty staff.

2. Increasing Medical and Food Service Contracts

The Department has a contract with Aramark corporation to provide food services at the Jail. Currently, the Jail can feed 2,000 inmates on any given day. Notification has been given to Aramark about the potential need to increase food services at the Jail to accommodate 300 or more additional inmates. Likewise, medical services are provided at the Jail by CHPPS. Notification has been made to CHPPS regarding the potential increase in medical care needed for the additional inmates. It should be noted that the DOC is already providing food, medical and other services to the inmates transferred from Lorton. Thus, this move merely changes the location where the services are provided from the Central Facility to the D.C. Jail.

3. **Sufficient clothing and linens**

The DOC currently has 3,200 jumpsuits for inmates. In addition, the Jail has received approximately 1,200 jumpsuits from Lorton, and will receive 900 from the VA Hospital during the week of November 12, 2001. The department has also solicited and received bids for the purchase of approximately 1,300 additional jumpsuits from private contractors. This award will be granted during the week of November 12, 2001. The DOC is also in consultation with the State of Maryland to purchase approximately 5,000 jumpsuits. Accordingly, the department will be able to provide a clean jumpsuit each week to inmates and maintain a sufficient supply of jumpsuits in stock as well.

Linen and laundry services for the Jail are contracted out to the federal government through the Veteran Administration (VA) Hospital. The department has made a clarification with the VA Hospital regarding the department's contract to ensure that the VA Hospital returns the exact number of sheets and towels sent to them. The VA Hospital will clean and deliver 2,000 jumpsuits, 4,000 sheets, and 2,000 towels to the Jail each week beginning November 10, 2001. The department will be able to dispense two sheets and one towel to each inmate weekly. The department will continue to monitor this contract to ensure that its terms are being complied with by the VA Hospital to avoid future shortages.

4. **Hygiene supplies, maintenance staff and supplies**

The Department has an adequate supply of hygiene supplies for inmates, including the additional 300 or more inmates from Lorton. (See Attachment 2, Inventory Supply/per case List for the D. C. Jail.) In addition, the Jail will receive all of the current supplies at the Lorton Correctional Facility once it closes. Likewise, the Jail has an adequate number of maintenance staff and supplies at the Jail to provide services for any additional inmates. The Jail will also receive all of the maintenance supplies as well as staff at the Lorton Correctional Facility once it closes. These staff members and supplies will be more that enough to adequately provide services at the Jail.

5. **Inmate Finance, Visitation, Telephones, and Inmate Grievances**

The Inmate Finance Unit at the Jail currently services the population at the Lorton Correctional Facility as well as the Jail. Thus the transfer of inmates from Lorton to the Jail will have no affect on inmate finance services.

Visitation hours are in place at the Jail and all inmates are allowed visitors. There is an established schedule for visitation for family members and for attorneys. Of course, the only time that visitation cannot occur is when the daily count at the Jail is in process and has not been cleared. Visitation cannot occur doing this time period for security and safety reasons. Inmates whose last names begin with A through H may

receive visitors on Mondays and Thursdays. Inmates whose last names begin with I through P receive visitors on Tuesdays and Fridays. Those inmates with last names beginning with Q through Z are allowed visitors on Wednesdays.

Recreation will continue to be provided to inmates at the Jail. Inmates in general population and communal housing units receive approximately thirteen hours of out-of-cell time daily. There are times scheduled for outside recreation. (See Attachment 3, Outdoor Recreation Schedule). There are two exercise yards for inmates, one for females and another for males.

The Department contracts with Verizon to service all of its telephones. Verizon responds to the Jail each Thursday to repair or replace inoperable inmate telephones. This contract will remain in effect and monitored to ensure compliance by the contractor.

Inmate grievances are being addressed at the Jail. The Warden receives and addresses approximately 400 grievances per month. Consistent with this responsibility, the grievances will continue to be addressed by the Warden. (See Attachment 4, Warden's Monthly Summary Report on Grievances for the month of August).

6. Housing of Protective Custody Inmates

Consistent with Jail management policy and procedures, inmates of the same custody classification can be housed together so long as there are no separation orders in effect. (See Attachment 5, Department of Corrections' Program Statement, Classification and Reclassification).

As with any correctional or detention facility, on any given day there will be items at the Jail that will be in need of repair and conditions that could be enhanced or improved. However, I am satisfied that as a matter of fact and law, there are no conditions or problems at the Jail that rise to the level of a violation of a federal right. For this reason, the population cap is neither justified nor defensible. Accordingly, I look forward to your support and concurrence in our request to the court to vacate the population cap.

Sincerely,

Odie Washington
Director

Enclosures

cc: Richard Love, Esq.

EXHIBIT F

Correspondence dated April 13, 2001 from William H. Dupree to Odie Washington.

Fraternal Order of Police

Department Of Corrections Labor Committee

400 5th Street, Northwest
Washington, D.C. 20001

Phone 202-737-3505
Fax 202-737-1890

April 13, 2001

Odie Washington, Director
D.C. Department of Corrections
1923 Vermont Avenue, NW
Washington, DC 20001

Dear Mr. Washington:

I have recently learned that the Agency is seeking the court's approval to increase the inmate population at the D.C. Jail from its court ordered ceiling of 1,674 to 2,000, while simultaneously eliminating security post and decreasing the workforce.

I am thoroughly distraught that you again ignored your statutory obligations to consult with the leaders of our Labor Committee over a matter that will present a major risk to the safety of our members, the public, and inmates confined at that facility. This, like many of your other recent decisions demonstrates a true lack of concern for the welfare of the rank-in-file employees; however, we will not be at rest while the Department pursues this reckless course.

I respectfully urge you to promptly provide me with your plans to increase the staffing complement at the DC Jail to sufficiently accommodate the proposed increase of more than three hundred (300) inmates. Otherwise, we will move to intervene in this litigation on behalf of our members to ensure that the agency included in its plans to furnish and maintain a safe environment.

Also, your continued clandestine method of operation and flagrant refusal to work collectively with our Labor Committee benefits neither the workforce, the public's confidence in this Agency, nor the interest of the District of Columbia Government.

I am available to discuss this matter with you; however, I will defer to your judgment concerning a need to address this matter in an amicable manner.

Respectfully,

William H. Dupree

William H. Dupree, Chairman
FOP/DOC Labor Committee

EXHIBIT G

Correspondence dated November 9, 2001 from William H. Dupree to Mayor Anthony A. Williams.

Fraternal Order of Police

Department of Corrections Labor Committee

711 4th Street, Northwest
Washington, D.C. 20001

Phone 202-737-3505
Fax 202-737-1890

November 9, 2001

The Honorable Anthony Williams, Mayor
1355 Pennsylvania Avenue, NW
Washington, DC 20001

Dear Mayor Williams,

I am writing this letter to you regarding an urgent safety and security matter at the D.C. Jail. Again, as I have complained to you many times before, the Director is out of State and inaccessible during this critical time. Therefore, I have no alternative but to place you on notice. The Department of Corrections is in the process of implementing a very irresponsible plan that not only violates the Court ordered ceiling at the D.C. Jail, but compromises the safety of both staff and inmate populations. This letter is to state the Union's opposition to any action the Department plans to take that will increase the inmate population, which in turn will exceed the Court ordered population cap.

At approximately 4:30 p.m. today (11/9/01), I returned an "urgent" telephone call received in the FOP Union Office from Deputy Director James Anthony. Mr. Anthony informed me that the Department was planning to transfer approximately 130 Correctional Officers from Central Facility to the D.C. Jail and that the only issue would be that they would not be getting the required notice for transfer.

I specifically asked Mr. Anthony if this action was planned to accommodate an increase in the inmate population at the Jail, which in turn would exceed the Court ordered cap. Mr. Anthony stated that the cap would not be exceeded, but that the issue had been referred to the appropriate officials who would address the matter in both long and short term. In the interim, an employee at the Jail notified me that the Department was already in the process of moving inmates from Central Facility to the D.C. Jail which would, at this time, increase the population ceiling.

At approximately 8:00 p.m. (11/9/01), I called the office of the Deputy Director to advise him that we oppose the action. After a brief conversation, Mr. Anthony admitted that the Department planned to transfer the felons from Lorton to the D.C. Jail, which in turn would exceed the court ordered population cap.

For the record, we stringently oppose any action the Department takes to exceed the number of inmates at the Jail that the Court has determined to be the maximum ceiling. Previously, I had requested in writing to bargain this issue with Director Odie Washington, and raised the matter in a Joint Labor Management Meeting several months ago. Director Washington assured me that an increase in the Court ordered population would not happen. Again the Department has deceived the employees' representatives in a matter which might prove costly to the District Government.

So that there is no misunderstanding of our position, please be advised that if the Department of Corrections plans to move the inmates assigned to Central Facility to the D.C. Jail and intentionally exceed the Court ordered population ceiling, we will take the necessary steps to reverse the action.

Furthermore, I deplore the fact that they would even consider such a reckless action while there are outstanding issues about whether the Jail is even a suitable habitat for staff or inmate, with the increased number of staff becoming ill working in that environment.

I respectfully urge you to contact me at your earliest convenience regarding this issue.

Sincerely,

f/William H. Dupree

William H. Dupree, Chairman
FOP/DOC Labor Committee

cc:
James Wallington, Esq.
D.C. Emergency Mgmt.
Odie Washington, Director

EXHIBIT H

Memorandum dated November 8, 2001 from DC DOC Deputy Director James A. Anthony to Concerned Staff.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS

Office of the Deputy Director

MEMORANDUM

TO: Concerned Staff

FROM: James L. Anthony
Deputy Director

DATE: November 8, 2001

SUBJECT: Transfer to the Central Detention Facility (CDF)

Appropriate arrangements are underway to move a number of Lorton based inmates to the Central Detention Facility (CDF) in the very near future. Accordingly, ample security personnel must be transferred to provide required support for population management. Therefore, effective Sunday, November 11, 2001, the following officers will report to the CDF on the shift indicated with the following days off.

Considering that this is very short notice, employees experiencing undue hardships may address their concerns with the Warden. Every effort will be extended to staff to lesson negative results relative to transfers to the CDF.

#1 SHIFT

Archer, Ron	T/W	Areevong, Numpech	W/T
Bhatti, Mohammed	T/F	Bruno, Richard	F/S
Burton, Stanley	S/S	Campbell, Eric	W/T
Carr, Jesse	S/M	Coley, James	W/T
Dancil, Michael	F/S	Glenn, Bill	S/M
Hall, Richard	T/W	Honor, Terry	S/S
Jones, Christine	T/F	King, Alma	F/S
Moore, Franklin	S/M	Cornelius, Calvin	T/W
Olarinde, Darlene	M/T	Owens, Shenna	W/T
Penn, Eddie	S/M	Pierce, Helen	F/S
Rogers, Rufus	T/F	Samuel, Sheneal	T/W
Sands, Robert	S/M	Thomas-Jackson, Penny	S/S
Triplett, Mickey	W/T	Trotter, Charles	M/T
Washington, Dana	M/T	Williams, Afreda	T/F
Williams, Glenn	S/S	Zanders, Bernice	S/M

#2 SHIFT

Abd-Al-Baqi, Rashidah	F/S	Ahmed, Zulfiqar	T/F
Anderson, Harry	T/W	Anwar, Imtiaz	T/F
Armstrong, John	S/S	Barnes, Bonnie	S/M
Belmo, Oscar	F/S	Betts-Lee, Deloris	T/W
Bishop, Annette	W/T	Blackwell, Maurice	F/S
Brewster, Virginia	S/S	Brown, James	T/F
Burrell, Cleother	S/S	Claiborne, Carolyn	S/M
Carter, Charlene	S/S	Forde, Carmen	T/W
Clinkscale, Connie	T/F	Cloyd Jr., Joseph	S/S
Currie, Robert	T/W	Daniels, Dennis	F/S
Dickens, Lewis	M/T	Duncan, John	S/S
Evans, Jonathan	S/S	Ford, Alvin	T/W
Fountain, Keith	W/T	Freeman, Roger	M/T
Garnett, Tracie	S/S	Gooden, Charles	W/T
Harper, Orlando	S/S	Harris, Pamela	F/S
Haten, Ronald	W/T	Hill, Solomon	T/W
Holbrook, James	W/T	Iftikhar, Ahmad	T/F
Jackson, William J.	T/F	Javed, Khalid	T/F
Johnson Jr., James	S/S	Jones, George	S/M
Jones, Leroy	W/T	King, Donald	W/T
Morgan, Paulette	T/F	Lee, Zelda	F/S
Lewis, Gregory	T/F	Lipscomb, Moses	S/S
Mahmood, Arshad	T/F	Newsome, Weldon	W/T
Mewborn, Michael	T/F	McCarthy, Larry	T/W
Mendez, Juan	W/T	Mitchell, Arthur	W/T
Mitchell, Calvin	F/S	Moore, Rodger	S/S
McCormick, Emmett	S/M	Scott, Roman	T/W
Pinterics, Frank	W/T	Rana, Arshad	F/S
Randolph, Derrick	F/S	Ransome, Desire	S/M
Riaz, Chaudhry	T/F	Robinson, Rose	S/M
Stewart, Lisa	S/M	Styron, Ricky	W/T
Taylor, Wayne	T/F	Triplett, Terrence	F/S
Tucker, Carol	S/S	Walker, Robert	W/T
Wilson, Lawrence	S/M	Witt, David	S/M
Wolfe, Roy	F/S	Sutton, Tony	M/T
Zamore, McSutton	T/F		

#3 SHIFT

Adams, Ronald	T/W	Ali, Abruskran	T/F
Allen, Chester	F/S	Allen, John	T/F
Billmeyer, Carl	T/F	Brown, Nathan	S/N
Brunner, Tyrone	W/T	Bryan, Bernard	M/
Carter, Aaron	T/W	Travers, Victor	T/F
Cobbs, Andre	M/T	Collier, David	T/\
Elliott, Willie	T/W	Exum, Mario	T/F
Fisher, Rogelio	F/S	Fua, Celerina	S/S
Gilbert, Larry	S/S	Glasper, Willard	S/S
Harris, Anthony	W/T	Jacobs, Marion	T/F
Johnson, Freddie	T/F	Jones, Rose	T/\
Karam, James	T/F	Kidd, Grady	F/S
Smith, Melvin	S/S	Lee, George	S/N
Lesperance Jr., Pierre	M/T	Marshall, Dana	T/F
Moody, Jerrie	T/F	Moore, Jerry	F/S
Moore, Tyrone	F/S	Nichols, Betty	S/S
Nseyo, Etebom	T/W	Ott, Joseph	T/I
Powell, Anita	T/F	Prioleau, Louis	S/I
Pugh, Lawrence	S/M	Saunders, Robin	F/S
Scott, Paul	S/S	Simmons, Clarence	F/S
Smith, James	S/S	Snow, Collins	T/I
Taylor, Angela	S/S	Thomas, David	F/S
Toukolon, George	T/F	Williams, Emanuel	T/.
Washington, Sharon	T/F	Williams, Raymond	T/
Williams, Ricardo	S/M	Williams, Ricco	S/

cc: Odie Washington, Director
Joan E. Murphy, Special Projects Officer
M. L. Brown, Warden – CDF
Dennis Harrison, Warden - Central
Mary Leary, Director OLRCB
William H. Dupree, Chairman FOP/DOC
Plumb F. Fulton, Asst Director of Personnel
Lorton Payroll
MEDAT

EXHIBIT I

Declaration of Correctional Officer Irving Robinson, dated November 14, 2001.

Fraternal Order of Police

Department of Corrections Labor Committee

711 4th Street, Northwest
Washington, D.C. 20001

Phone 202-737-3505
Fax 202-737-1890

November 14, 2001

For the Record:

I am a Correctional Officer currently assigned to the Central Detention Facility (DC Jail) with over fifteen years of service with the D.C. Department of Corrections. My current duty hours are 7:30 am to 4:00 pm and I am assigned Saturday and Sunday as my regular days off. I also serve as the Treasurer for the Fraternal Order of Police/Department of Corrections Labor Committee, which represent the employees of the DC Department of Corrections.

On Wednesday, November 7, 2001, I was approached by the DC Jail Security Officer and asked to report for duty at 6:00 am on Saturday, November 10, 2001 (overtime) for a "duties unknown" special detail.

On Saturday, November 10, 2001, I reported to duty at 6:00 am. I was informed during a short briefing that the inmate felons were being transferred from the Lorton Complex to the DC Jail. I was also advised that the riot gear was prepared and being maintained in the Receiving and Discharge (R&D) section of the DC Jail in case of a disturbance. The first buses filled with eighty inmates from Lorton arrived at the DC Jail at approximately 8:00 am and continued to arrive throughout the remainder of the day.

I began this detail beginning on Saturday, November 10, 2001 until Sunday, November 11, 2001 at 7:30 am (over 24 hours). During this time, it is my observation that the over crowded conditions at the DC Jail posed an immediate threat to staff and inmates.

During the transferring process, the inmates being received from Lorton were taken directly to the housing unit instead of first receiving health screening, which is standard procedure for new intakes. At least one inmate attempted to smuggle in a "shank" (homemade knife). He defended his action by stating that he will really need to protect himself now. Additionally, inmates Peter Smith, DCDC #290-722 and Harold Crowe, DCDC #290-771 are two inmates that are required to serve sentences on weekends. Upon both men arriving they remained housed in R&D from Saturday at 8:00 am until Sunday at 7:30 am when I departed due to no available bed space in the DC Jail. I made a follow-up telephone call to R&D at approximately 3:00 pm Sunday afternoon and learned the men were still in R&D where they were to remain until being released at 9:00 pm.

Signed under penalty of perjury this 14th day of November 2001 at Washington, D.C.

Irving Robinson